1896 17

# PRECEDENTS

OF

# PROCEEDINGS

IN THE

# HOUSE OF COMMONS;

UNDER SEPARATE TITLES.

WITH OBSERVATIONS.

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VOL. IV.

RELATING TO CONFERENCE, AND IMPEACHMENT.

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M.DCC.XCVI.

# PRECEDENTS

OF

# PROCEEDINGS

IN THE

# HOUSE OF COMMONS;

WITH

OCCASIONAL OBSERVATIONS.

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TO

THE RIGHT HONOURABLE

# HENRY ADDINGTON,

SPEAKER

OF THE HOUSE OF COMMONS,

THE FOLLOWING COLLECTION OF

PRECEDENTS,

IS,

WITH THE GREATEST RESPECT,

INSCRIBED,

BY HIS MOST FAITHFUL FRIEND

AND OBEDIENT HUMBLE SERVANT,

JOHN HATSELL.

# PREFACE

TO THE

# FOURTH VOLUME.

*THE only parts of this Work, which remain to be offered to the Public, are included under the following Titles,* Conference, *and* Impeachment.

*The Editor is aware, that, on the latter of theſe heads, he has, in ſome inſtances, been induced to deliver his opinion on queſtions of Parliamentary Law, more decidedly, than perhaps it was prudent for him to have done. He has however always endeavoured to expreſs that opinion with diffidence; and, whenever he has preſumed to form any concluſions, of what appeared to him to be the Law of Parliament, he has, at the ſame time, ſtated at length the particular Caſes and Precedents, from whence thoſe concluſions have been drawn.*

*It has ſometimes been advanced, that this expreſſion of "Par-" liamentary Law," or "The Law of Parliament," is inaccurate; for that there is no ſuch particular Law, diſtinct from the Common Law of the Land. No ſuch diſtinction has ever*

*been attempted to be made; but, from the earlieſt ages of our hiſtory to the preſent moment, it has been uniformly aſſerted, by thoſe beſt acquainted with theſe ſubjects,* "*That the judicial proceedings in Parliament are to be regulated, not by what are commonly and technically called, the Rules of the Common Law, but by their own cuſtoms, and the ancient practice of the two Houſes of Parliament,*" *and therefore,* "*That the Law of Parliament forms part of the Common Law of the Land.*"

*Above four hundred years ago, the Lords claimed it to be their acknowledged franchiſe,* "*That matters moved in Parliament ſhall be managed, adjudged, and diſcuſſed, by the courſe of Parliament; and in no ſort by the Law Civil, or by the Common Law of the Land, uſed in other lower courts of this kingdom.*" *Sir Edward Coke ſays,* "*As every court of juſtice hath laws and cuſtoms for its direction, ſome by the Common Law, ſome by the Civil and Canon Law, ſo the High Court of Parliament ſuis propriis legibus et conſuetudinibus conſiſtit. It is by the Lex et conſuetudo Parliamenti, that all weighty matters concerning the Peers of the Realm, or Commons in Parliament aſſembled, ought to be diſcuſſed, adjudged, and determined.*" *Indeed all the wiſeſt ſtateſmen and greateſt lawyers, through a long ſucceſſion, from Sir Edward Coke and Mr. Selden, to the Earl of Hardwicke, have, whenever an opportunity has been offered to them, conſtantly repeated this doctrine. Nor is the authority of the Judges in Weſtminſter Hall wanting in its ſupport: it will be found, in the Records of Parliament, that theſe venerable Magiſtrates, when application has been made to them for their opinion on queſtions, relating to judicial proceedings in Parliament, have modeſtly*

*modeſtly "deſired to be excuſed from delivering any ſuch opinion; "for that of thoſe ſubjects the Lords only are the judges." And if, at any time, ſome of them have preſumed to diſregard theſe rules, and to declare the Law of Parliament, they have been told, "That ſuch judgment belongeth only to the Lords; "and that it is the franchiſe and liberty of the Lords, by the "antient cuſtom of the Parliament, to be the ſole Judges in ſuch "caſes."*

*The great variety of ſubjects, which come before Parliament for their conſideration, has, ſince the publication of the former Volumes, ſuggeſted the inſertion of ſome Titles, and made it neceſſary to refer to ſeveral Precedents, which had not before been the objects of particular attention—it has therefore been thought proper, together with this Volume, to re-print the three former with thoſe additions. It has been already obſerved, that, in forming an opinion of this Work, it ought to be conſidered as a ſort of Index to the Journals at large; intended to aſſiſt thoſe Members of Parliament or other perſons, who may be deſirous of conſulting the original Records on theſe ſubjects. Whether it will be found to anſwer a ſtill more important purpoſe, muſt be left to the judgment of the Reader; perhaps it may not be too preſumptuous to hope, that theſe reſearches, and the precedents here brought forward, may, in ſome degree, tend to give additional ſtrength and ſupport to thoſe maxims and principles, which are the foundation of the Britiſh Government—and which have hitherto maintained the balance of this juſtly admired Conſtitution, as well againſt the weight of an undue exerciſe of the Prerogative, or of the influence of the Crown, as againſt the no leſs dangerous, though*

*more*

*more plauſible, attempts to extend the powers of the People, beyond what were claimed, at the memorable Æra of the Revolution, to be, "The true, antient, and indubitable rights and liberties of the "ſubjects of this kingdom," and which, by the Bill of Rights, were "declared, enacted, and eſtabliſhed, to ſtand, remain, and be, "the law of the realm for ever."*

COTTON-GARDEN,
October 20th, 1796.

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PRECEDENTS

# PRECEDENTS OF PROCEEDINGS IN THE HOUSE OF COMMONS.

## CONFERENCES.


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## CONFERENCE.

### I. *By whom demanded, and on what Account.*

1. ON the 29th of November, 1554, Meſſage from the Lords by the Maſter of the Rolls and the Solicitor General, that the Lords had appointed the Lord Chancellor, four Earls, four Biſhops, and four Barons, to confer with a number of this Houſe; who immediately were ſent unto them. The ſubject of this conference was, to deviſe a Supplication * to King Philip

* See, in the Parliamentary Hiſtory, Vol. III. p. 315, Cardinal Pole's Speech on delivering his Legation from the Pope, the form of the Supplication, and the Legate's Abſolution. Whilſt the Cardinal, by the Pope's authority, pronounced the Abſolution, "all "the Parliament, both Lords and Commons, "were on their knees."

and Queen Mary, for again uniting this realm and its dominions to the Church of Rome, by the means of Cardinal Pole.

2. On the 4th of December, 1554, the Attorney and Solicitor General * brought to the Houſe of Commons a liſt of divers names of the Upper Houſe, requiring a number of this Houſe to confer with them for Parliament matters; which immediately were named; viz. the whole Council of this Houſe, and twenty-one Knights and Burgeſſes, and ſent up to the Lords. This conference was probably on the ſame ſubject, as that, which appears from the Lords Journal, to have been again held on the 6th of December, which was, "for "the drawing of a Bill touching the Repeal of certain Statutes †."

3. On the 10th of May, 1571, a Meſſage from the Lords, to deſire that a number of this Houſe may be preſently ſent to confer with their Lordſhips, touching the Bill of Attainders ‡, and the Bill againſt Bulls; which is immediately complied with.

* It appears from this, and the foregoing caſe, that at this time, the Maſter of the Rolls, and the Attorney and Solicitor General, attended the Houſe of Lords, as the Maſters in Chancery do now, and brought meſſages to the Houſe of Commons.—See what is ſaid upon this ſubject in the 2d vol. of this work, p. 26, 27, and 28.

† It is ſaid, in the Parliamentary Hiſtory, 3d vol. p. 325, that this Conference was carried on to the 20th December, when a Bill was read 1° in the Houſe of Lords, "for the "repeal of certain Acts made againſt the ſu- "premacy of the See of Rome," and that this Bill was read 2° on *Chriſtmas Day*, "a "day," it is added, "on which we have "never found a Parliament ſitting before; "but it may be ſuppoſed, that they thought "they could offer no higher oblation to "Chriſt on that feſtival, than to repeal thoſe "laws which had ſhut his Vicar out of the "kingdom." Unfortunately for this ingenious ſuppoſition, it is founded on a miſtake; for the Lords did not ſit on Chriſtmas Day, which fell this year on a Tueſday; but the compilers of the Parliamentary Hiſtory were led into this error by a miſtake in the written Journal, in calling *Wedneſday* (the day on which this Bill was read 2°) the 25*th*, whereas it was really the 26*th*. This miſtake is corrected in the printed Journal of the Lords. —Both Houſes adjourned over Chriſtmas Day.

‡ The Bill of Attainders had come from the Lords, and was then depending in the Houſe of Commons; the Bill againſt Bulls began in the Lords, but had been agreed to by the Commons with amendments, and ſent back on the 9th of May.

4. On the 23d, 24th, and 25th of May, 1571, there are ſeveral Conferences deſired by the Lords, upon Bills then depending.

5. On the 12th of March, 1575, a meſſage is brought from the Lords, to deſire that certain Members might be authorized to ſhew to their Lordſhips the reaſons, which did move this Houſe to deal ſo hardly in Lord Stourton's Bill.—This meſſage was not well liked of, but thought prejudicial to the liberties of this Houſe; whereupon it was reſolved, That no ſuch reaſon ſhall be rendered, nor any of this Houſe be appointed unto any ſuch commiſſion.—On the 13th of March, the Lords ſend another meſſage for a Conference touching the Bill of the Lord Stourton, "which, their Lordſhips "hear, hath had offers of proviſoes, or ſome other things, to the "ſtay of the proceeding of the ſaid Bill." After debate, the Lords Meſſengers were called in, and told for anſwer, "That by the reſo-"lution of this Houſe, according to its ancient liberties and privi-"leges, Conference is to be required by that Court, which, at the "time of the Conference demanded, ſhall be poſſeſſed of the Bill, "and not of any other Court; and further, that this Houſe, being "now poſſeſſed of the Bill, and minding to add amendments, will "(if they ſee cauſe and think meet) pray Conference with their "Lordſhips themſelves, otherwiſe not." The Bill is paſſed the ſame day, with amendments, and ſent back to the Lords; and then, the Lords again deſiring a Conference upon this Bill, this Conference is agreed to, and Members appointed to manage it.—On the 14th of March, the Lords complain of the unkindneſs of the Commons, in relation to this proceeding; to which charge the managers are ordered to declare, "That this Houſe hath not done, doth "not, and will not give their Lordſhips any ſuch occaſion *."



* This Bill was for the reſtitution in blood of John, the eldeſt ſon of Charles Lord Stourton. The father had, with the aſſiſtance of his ſervants, committed a murder on one Hargill and his ſon; for which, he was hanged at Saliſbury, the 16th of March, 1557 (it is ſaid) with an halter of ſilk, in reſpect of his quality.—Collins's Peerage, Vol. VI. p. 545.

It

6. On the 27th of February, 1609, a Conference is desired with the Lords, complaining of a book, published by one Dr. Cowell, called *The Interpreter*, and desiring the Lords to join in examining, and censuring, and punishing the party *.—See the 2d of March, and in the Lords Journal the 2d, 3d, 5th, and 8th of March.

7. On the 13th of April, 1614, the Lords having sent down a Bill touching the Palsgrave, and the Commons being desirous to amend the Bill, desire a Conference with the Lords upon this proposed amendment: which is holden on the 14th †.

8. The Commons having pronounced a sentence against Floydd, for contumelious expressions against the Palsgrave, and his wife, the Lords, in order not to suffer any thing to pass which might prejudice their right in point of judicature, on the 5th of May, 1621, desire a Conference on this subject ‡.

9. When the Commons, on the 3d of April, 1628, had come to several resolutions §, which were afterwards the foundation of the

It appears from the Lords message (which is entered in the Commons Journal of the 12th March) that this Bill, being for restitution in blood, had been signed by Queen Elizabeth.

* See in the Biographia Britannica, an account of this Dr. Cowell, and of the work, for which he was censured: He was a Civilian, and patronised by Archbishop Bancroft—The contest at this time running very high, between the Civilians and the Common Lawyers, Sir Edward Coke, then Chief Justice of the Common Pleas, who valued himself as the great advocate for his profession, and had much interest in the House of Commons, stirred up this prosecution against Dr. Cowell.

† This proceeding was informal; the Commons should have amended the Bill without Conference; if the Lords had disagreed to their amendments, then the Lords should have demanded the Conference, to assign the reasons for their disagreement.

‡ See this case of Floydd more at length in Vol. III. of this work, p. 46.—See also the 7th and 8th of May, 1621, and subsequent days, in the Journals of both Houses, for the proceedings at the several Conferences held touching this matter.

§ These Resolutions are as follow:

1st, Resolved, upon question, That no free man ought to be committed, or detained in prison, or otherwise restrained, by the command of the King, or the Privy Council, or any other, unless some cause of the commitment, detainer, or restraint, be expressed, for which,

the Petition of Right, they reſolve, on the 4th, to deſire a Conference with the Lords, concerning certain ancient and fundamental liberties of the ſubject*.

10. On the 1ſt of February, 1661, the Lords, at a Conference, taking notice that ſeveral perſons, excepted in the Act of Oblivion, were omitted in the Bill for execution of the perſons attainted of High Treaſon, which had paſſed the Commons, and been ſent to the Lords, ſay, That though the Lords could have inſerted their names by way of amendment; yet, in civility, and for keeping a good correſpondence with the Commons, the Lords deſire to know the reaſons which induced this Houſe to omit the ſaid perſons.—The Houſe of Commons, upon the report of this Conference, immediately reſolve, That another Conference be deſired with the Lords upon the ſubject-matter of this laſt Conference; and at that Conference,

which, by law, he ought to be committed, detained, or reſtrained:—without one negative.

2dly, Reſolved, upon queſtion, That the writ of Habeas Corpus may not be denied, but ought to be granted to every man that is committed, or detained in priſon, or otherwiſe reſtrained, though it be by the command of the King, the Privy Council, or any other, he praying the ſame:—without one negative.

3dly, Reſolved, upon queſtion, That if a free man be committed, or detained in priſon, or otherwiſe reſtrained, by the command of the King, the Privy Council, or any other, no cauſe of ſuch commitment, detainer, or reſtraint, being expreſſed, for which by law he ought to be committed, detained, or reſtrained, and the ſame be returned upon an Habeas Corpus granted for the ſaid party, that then he ought to be delivered, or bailed:—without one negative.

4thly, Reſolved, upon queſtion, That the ancient and undoubted right of every free man is, that he hath a full and abſolute property in his goods and eſtate; and that no tax, tallage, loan, benevolence, or other like charge, ought to be commanded or levied by the King, or any of his Miniſters, without common aſſent by act of Parliament:—agreed, nemine contradicente.

* See in the Lords and Commons Journals, particularly in the Lords Journal of the 9th of April and 23d of May, 1628, the further proceedings and Conferences upon this ſubject, with the arguments at length touching the ſaving of the King's prerogative, which the Lords and King wiſhed to inſert, but which the Commons prudently and firmly rejected.—All theſe arguments are very ſummarily reported in Ruſhworth's Collections, Vol. I. p. 527.—See alſo, in Hume's Hiſtory of Charles I. and Charles II. what he ſuppoſes to have been urged by each party in favour of their reſpective opinions. The Petition of Right, with the King's anſwer, *Soit droit fait, come eſt deſire*, is printed in the Statutes at Large, at the beginning of the Acts of the 3d year of Charles the Iſt.

ence,

ence, that it be declared, "That this Houſe doth not find any prece-
"dent for giving in their reaſons, in ſuch manner as is deſired, until
"there be ſome alterations in the Bill, that may occaſion the ſame."

11. On the 10th of May, 1662, the Lords having amended a Bill ſent from the Commons, and the Commons having agreed to ſome of theſe amendments, and diſagreed to others, the Commons ſend back the Bill, with this meſſage to the Lords; to which the Lords return for anſwer, "That their Lordſhips obſerve it to be againſt the courſe of Parliament, that ſuch tranſactions ſhould be returned by "Meſſage," which ought to have been by "Conference," in which reaſons might have been given for the Commons diſſent; the Lords, in conſideration thereof, have returned the Bill, as it was this day delivered at the Bar, "to the end the due courſe of "Parliament in the tranſacting of things of this nature may be "obſerved."—The Commons acquieſce in this proceeding, and deſire a Conference accordingly.

12. On the 15th of May, 1675, the Commons ſend a meſſage to the Lords, to acquaint them, "That they have received information "that there is an appeal brought in a cauſe againſt Mr. Onſlow, a "Member of their Houſe, and to deſire the Lords to have regard to "the privileges of this Houſe." The Lords return an anſwer, on the 18th of May, "That it is their right to receive and determine "appeals from inferior courts, though a Member of either Houſe "be concerned; and from this right, and the exerciſe thereof, their "Lordſhips will not depart." The Commons immediately deſire a Conference with the Lords, upon the privileges of this Houſe, contained in this anſwer of the Lords to their meſſage. On the 21ſt of May, Sir Trevor Williams reports, he had deſired the Conference; to which meſſage the Lords will return anſwer by meſſengers of their own. On the 27th, the Lords are reminded of this buſineſs; and on the 28th of May the Lords return this anſwer, "That they did

"not

" not agree to a Conference on the meſſage of the 21ſt inſtant,
" becauſe it was deſired upon the anſwer ſent by the Lords, in the
" caſe of Mr. Onſlow, on the 17th inſtant, where the whole matter
" concerns the judicature of the Lords, on which they can admit no
" debate, nor grant any Conference; but this preſent meſſage being
" for a Conference concerning the privileges of their Houſe, the
" Lords do agree to it, provided that nothing be offered at the Con-
" ference that may any ways concern their Lordſhips judicature *."

13. On the 9th of March, 1677, a Conference is held, at the deſire of the Lords, upon a Bill which had been paſſed by them, and returned from the Commons with ſeveral amendments and alterations, " ſo many," the Lords ſay, " as to make it a new Bill." On the 19th of March, the Commons give reaſons for objecting to this uncommon proceeding of demanding a Conference upon amendments to which the Lords have not diſagreed †.—The Lords refer this matter to their Committee of Privileges ‡.

* The Commons were not ſatisfied with this proviſo, and refuſed to go to the Conference. Several other Conferences are afterwards held upon the ſubject-matter of this diſpute; which, with the other differences then ſubſiſting between the two Houſes, relative to the judicature of the Houſe of Lords, compelled the King to put an end to the ſeſſion on the 9th of June.—See particularly the Commons Journal of the 28th of May and 2d of June, with reſpect to the regularity of the Lords inſerting, in their agreement to the Conference, a limitation or proviſo, of what ſhall or ſhall not be offered by the Commons at ſuch Conference.

† The Lord Privy Seal, who managed the Conference on the 9th of March, being aſked, Whether the Lords did diſagree to the amendments ſent up by the Commons, anſwered, " I do not ſay, the Lords diſagree; but, that " they cannot agree to thoſe amendments." One of the reaſons given by the Commons on the 19th of March, is, " That, according to " the ancient courſe and method of tranſactions " between the two Houſes, when a Bill with " amendments is ſent from either Houſe to " the other, by meſſengers of their own, the " Houſe, that ſends them, gives no reaſons " for their amendments: but the Houſe to " whom it is ſent, if they find cauſe to diſagree, " do uſe to give reaſons for their diſſent to " every particular amendment; every one of " which is ſuppoſed to carry with it its own " reaſon, until it be objected againſt."

‡ On the 20th of December, 1680, the Lords proceed with as much irregularity in ſending a meſſage, " That they have returned a Bill, to which the Commons had made ſeveral amendments, to many of which the Lords did not agree." Inſtead of this meſſage, they ſhould have deſired a Conference, where they might have given their reaſons for their diſagreeing.—The Commons never take this meſſage into conſideration.

14. On the 13th of May, 1690, the Lords desire a Conference to acquaint the Commons, that they have agreed to the amendments made by the Commons to a Bill sent from the Lords *, with an amendment, and the reason for that amendment, to which amendment they desire the concurrence of the Commons.

15. On the 17th of December, 1690, the Commons having taken into consideration several amendments made by the Lords to the Mutiny Bill, agree to some, and disagree to others; and then desire a Conference with the Lords, to communicate to them, to which of the amendments the Commons have agreed or disagreed; but give no reasons at the Conference for their disagreement †. Another Conference is held the same day, at the desire of the Lords, who assign reasons for adhering to their amendments.

16. On the 6th of February, 1693, the Lords order a search to be made of what precedents there are, of messages to or from the House of Commons, for putting each other in mind of any thing delivered at a Conference, or otherwise, except Bills. The report of the precedents is made on the 7th of February; and then the Lords desire a Conference with the Commons, to remind them, that, having formerly communicated to them certain papers of information, which the Lords conceive to be of great consequence, and fit to be enquired into, they had heard nothing yet from the Commons relating to that matter.

17. On the 3d of January, 1695, a Conference is held, at the request of the Lords, to communicate to the Commons, amendments

* This Conference was unnecessary.—The more usual and proper mode of proceeding would have been, to have made this communication to the Commons by message.

† This proceeding was informal—as, when either House disagree to amendments made by the other, it is not only usual, but it seems almost necessary, that they should assign their reasons for the disagreement, that the House, who made the amendments, may know, and weigh the grounds upon which they are objected to.

which

which the Lords had made to a Bill about a re-coinage of ſilver, that had been paſſed by the Commons *; which amendments, the Lords ſay, "they directed to be communicated at a Conference, "being willing to take that opportunity of acquainting the Houſe "of Commons, that the Lords are ſenſible the alterations they have "made are ſhort of what may be requiſite to be done upon ſo nice "a ſubject, but that whatever may prove defective, they have no "doubt will be ſupplied by the care and prudence of the Houſe of "Commons."

18. The Commons, at a Conference on the 17th of February, 1702, uſed expreſſions, which the Lords taking into conſideration on the 18th, reſolved to be "highly reflecting and unparliamentary." A Committee is then appointed by the Lords to conſider, "what "further proceedings are fit to be had in this matter." On the 22d of February, the Lord Steward reports from this Committee, "That not finding by any precedent, that meſſages, delivered from "one Houſe to the other, at a Conference, have been anſwered "otherwiſe than at another Conference, the Committee are of "opinion, that the reſolutions of the 18th inſtant be delivered to "the Commons at a Conference." To which report, the Lords agree.—The Commons afterwards deſire a free Conference upon the ſubject-matter of this Conference; in which they acquaint the Lords, "That the Lords delivering at a Conference their reſolu-"tions, inſtead of reaſons, in anſwer to the reaſons of the Com-"mons, is not agreeable to the ancient rules and methods of Par-"ment, obſerved in Conferences between the two Houſes."

* It is not uſual to deliver amendments at a Conference.—The common mode of proceeding is by meſſage. A ſimilar proceeding by Conference is had, at the deſire of the Lords, on the 15th of May, 1701, relating to a Bill for regulating the King's Bench and Fleet Priſon; at which the Lords ſtate their reaſons for the alterations they had made. The conſideration of the report of this laſt Conference, is put off by the Commons from time to time, and at laſt dropt.

19. On the 7th of May, 1711, the Commons taking into conſideration ſome amendments made by the Lords to a Bill, make amendments to one of them, and then, on the queſtion for agreeing to the Lords with their amendment ſo amended, it paſſes in the negative. A Committee is then appointed to draw up reaſons to be offered to the Lords, at a Conference, for diſagreeing with this amendment, "thus amended *." On the 11th of May, the reaſons are reported, and the Conference is held on the 12th.—As ſoon as the Conference is reported in the Houſe of Lords, the Lords reſolve, "That they cannot but take notice of this, as unuſual in "the methods of proceeding on amendments between the two "Houſes, and therefore the Lords muſt neceſſarily deſire the opi-"nion of the Commons upon the proviſo as ſent down from their "Lordſhips." This brought on other Conferences, on the 16th, 17th, and 23d of May, till, on the 31ſt of May, the Commons are compelled to aſſign their reaſons for diſagreeing to the clauſe as it was originally ſent from the Lords.

20. On the 15th of February, 1715, the Commons reſolve, *Nem. Con.* to deſire a Conference with the Lords †, in relation to the courſe of proceeding on impeachments exhibited by the Commons.

21. On the 15th of July, 1717, meſſage from the Lords, "That "the Lords had accepted, and paſſed, *Nem. Con.* a Bill for a General

* I have heard Mr. Onſlow ſay, That Mr. Bromley, the Speaker, was led into this error, by the Whig party who were then in oppoſition, in order to expoſe his inability for the ſituation, in which he had been placed by the Tories.

† It appears from the report of the Committee, on the 16th of February, who were appointed to draw up what was proper to be offered at the Conference, that the object of this Conference was to correct a miſtake the Lords had committed, in not ſending down the anſwers in writing to the Commons, which the impeached Lords had delivered in to the Lords, when they pleaded guilty. The Lords admitted the objection, and on the 20th of February came to a reſolution, "That, for "the future, all writings delivered into the "Houſe of Lords, by perſons impeached by "the Commons, at the time when they put "in their anſwers or pleas, or true copies of "ſuch writings, ſhall be forthwith ſent to the "Commons."

"Pardon."

"Pardon." This meſſage being objected to, a Committee is appointed to prepare reaſons to be offered to the Lords upon this meſſage; which being reported, two Conferences are held *.

22. On the 12th of July, 1721, the Lords deſire a Conference with the Commons, which is agreed to; and it is to aſk, on the part of the Lords, the aſſiſtance of the Commons, in order to have a ſtate of the facts, on which the Bill for puniſhing the directors of the South Sea Company was grounded, more fully laid before their Lordſhips †.

23. On the 26th of April, 1729, a Conference is deſired by the Lords, and held, for the purpoſe of deſiring the aſſiſtance of the Commons, to lay before the Lords, a ſtate of the matters of fact, which are ſuggeſted in a Bill for diſabling Bambridge to hold the office of Warden of the Fleet, as the ground and foundation upon which the Commons proceeded to paſs the Bill. On the 28th, a Committee is appointed to ſtate the matters of fact; which are reported, and communicated to the Lords, at a Conference, on the 30th of April ‡.

24. The Lords having made amendments to a Bill for preventing the committing of frauds by bankrupts, to one of which the Commons diſagreed, Conferences are held between the two Houſes on the ſubject of this amendment.—The Lords inſiſt on their amendment, and the Commons do not inſiſt on their diſagreement; and on the 1ſt of June, 1732, they acquaint the Lords, at a Conference,

* See in the Appendix to this volume (N° 1.) the ſeveral reaſons ſuggeſted on the part of the Lords and Commons, in objection to, and ſupport of, this proceeding, as far as it related to the forms of Parliament.

† The Commons direct ſuch Members as were of the Committee of Secrecy, to be a Committee for the purpoſe of ſtating the matters of fact, on which the Bill was grounded. They report on the 14th of July, and communicate this ſtate to the Lords at another Conference.

‡ See alſo the 15th of March, 1731, and the 3d and 15th of May, 1732.

That they do not inſiſt on their diſagreement *; and they deliver back the Bill with the amendments.

25. See the proceedings on the 21ſt of November, 1739, on the Commons deſiring a Conference with the Lords, to communicate a reſolution agreed to by them, touching the interruption of commerce by the Spaniards, and to deſire the concurrence of their Lordſhips.—See the 22d and 23d of November.

26. On the 6th of November, 1745, the Lords deſire a Conference, touching certain treaſonable declarations and printed papers, publiſhed and diſperſed about the kingdom by the Pretender and his eldeſt ſon.—The Conference is held the next day, the 7th of November.

27. On the 29th of March, 1756, the Commons deſire a Conference with the Lords, upon a matter of great importance, concerning the defence and ſecurity of his Majeſty and his kingdoms, in the preſent critical conjuncture †

* The propriety of this laſt communication being made to the Lords "at a Conference, "and not by meſſage," aroſe, from the Commons being at that time in poſſeſſion of the Bill, which they were obliged to re-deliver. —When the Lords, on the 16th of June, 1747, do not inſiſt, after Conference, on an amendment made by them to a Bill, they, being in poſſeſſion of the Bill, make this communication to the Commons by "meſſage," and not at a "ſecond Conference."

† This Conference was to deſire the concurrence of the Lords to a reſolution agreed to by the Commons, to addreſs his Majeſty, "That he would be pleaſed to order twelve "battalions of his Electoral troops to be forth-"with brought into this kingdom."

# CONFERENCE.

## II. *Number of Managers; Time, and Place.*

1. ON the 6th of December, 1555, upon a meſſage ſent from the Commons to the Lords, to declare their opinion, that their privilege was broken, by one of their Members being bound in a recognizance in the Star Chamber, to appear before the Council, twelve days after the end of the Parliament;—a meſſage is returned from the Lords to require ſix of this Houſe to confer with the Lords upon that ſubject. Whereupon Mr. Comptroller, Mr. Secretary Petre, and four others, went up; and being returned, reported, "That the Chief Juſtice, Maſter of the Rolls, "and Serjeants, did clearly affirm, that the recognizance is no breach "of privilege *."

2. On the 24th of January, 1557, Mr. Speaker declared from the Lords, That it was meet to ſeek for the ſure defence of the realm, and a relief for the ſame; and, to enter into that, the Lords had appointed three Earls, three Biſhops, and three Barons; unto whom were appointed twenty-one of this Houſe †.

3. A Bill from the Lords for the puniſhment of treaſons, had been agreed to by the Commons, with a proviſo by way of amendment. On the 3d of March, 1558, there is a meſſage from the Lords, by the Solicitor General ‡, to deſire That ten of this Houſe may attend certain of the Lords to-morrow, about this proviſo. On the 13th of March, it appears, from the Lords Journals, that they agreed to the amendment.

* See the obſervations upon this caſe in the 1ſt volume of this Work, page 74, N° 27.

† By the ancient rule of the Houſe, eighteen Commoners only ought to have been appointed.

‡ See before, note * p. 2.

4. On

4. On the 31ſt of October, 1566, the Privy Counſellors *, with ſixty-five of the Houſe, went up to the Lords; and returning, after thanks, received anſwer, That on Saturday next, in the afternoon, the Lords will confer with them in the Utter †. Chamber of Parliament.—This Conference was on the ſubject of Queen Elizabeth's marriage. See her anſwer on the 6th of November.

5. On the 26th of March, 1604, a Conference is deſired with the Lords, about the matter of Wardſhip; to which the Lords agreed, and ſent back word, That for their number, time and place of meeting, they would ſend anſwer by Meſſengers of their own. On the ſame day, they ſend a meſſage by two Judges ‡, a King's Serjeant, and a Maſter in Chancery, That they have appointed the Conference to be held in the Painted Chamber, at two o'clock; and that their Lordſhips had apppointed thirty of their Houſe, to meet ſuch a number of this Houſe as ſhall be thought fit. The Commons returned for anſwer, That they will attend the Conference with the number of ſixty, at the time and place appointed §.

6. On the 23d of February, 1623, the Lords, having deſired a Conference between both Houſes, and having appointed the Painted

* See in the Lords Journals of the 30th and 31ſt of October, the names of the Lords and Commons, appointed to manage this Conference.—In Sir Symonds Dewes's Journal, p. 102,—126, there is a much fuller account of the ſubject-matter of this Conference, than in either the Lords or Commons Journal.

† This is probably, "The Outward," or what is now called "The Painted Chamber," and where Conferences between the two Houſes are ſtill uſually held.

‡ Theſe Meſſengers, are Sir John Popham, Lord Chief Juſtice of England; Sir Chriſtopher Yelverton, one of the Judges of the Common Pleas; Sir John Crooke, Knight, Deputy Chancellor of the Exchequer, and one of the King's Serjeants at Law; and Sir Richard Steele, Doctor of Laws, and a Maſter in Chancery.

§ The following entry is inſerted in the Commons Journal of this day. "*Note*, as an "ancient rule of the Houſe, that, upon any "Conference, the number of the Commons, "named for the ſaid Conference, are always "double to thoſe of the Lords; and the place "and time of meeting appointed by the "Lords."

Chamber, ſend word the next day, That, thinking the Painted Chamber too ſtrait, they have, in reſpect of the weight and importance of the buſineſs*, thought Whitehall the fitter place. To which the Commons agree.

7. On the 11th of March, 1623, the Lords deſire a Conference, and mention their number of twenty-four, but no time or place. The Commons anſwer, That they will give their Lordſhips a meeting with a proportionable number, at ſuch time and place as their Lordſhips ſhall appoint; and immediately name forty-eight Members to attend. The Lords appoint the meeting preſently, in the Painted Chamber.

8. On the 29th of April, 1624, the Lords, upon a Thurſday, deſire a Conference on the next day. The Commons having appointed buſineſs on that day, deſire the Conference may be on Saturday; to which the Lords agree †.

9. On the 22d of June, 1625, the Commons deſire a Conference with the Lords, to join in a petition to the King, for a General Faſt; the time and place, and number of Committees, they leave to the Lords ‡.

10. On the 7th of July, 1625, the Lords deſire a Conference, to be held "preſently." The Commons ſend back word, "That

* This Conference was held, to hear, from the Prince of Wales and the Duke of Buckingham, their account of the Prince's Journey into Spain, and of the negociations there. See this Report at length in the Lords Journal of the 27th of February.

† This is the entry in the Commons Journal; but what is entered of this proceeding in the Lords Journal of this day, was more probably the real ſtate of the caſe, as it is more conſonant to the rule and practice of Parliament. It is there ſaid, "That the Commons, having appointed the time, required for this Conference, for other buſineſs, deſire their Lordſhips to appoint ſome other time, and they will attend accordingly." The Lords then appointed Saturday, and ſo anſwered the Meſſengers.

‡ The Journal of the Commons being wanting here for ſome days, See the proceedings upon this Conference in the Journals of the Lords.

"they

" they are in a ſerious and weighty buſineſs, which they conceive " may hold long, and will therefore ſend anſwer by Meſſengers of " their own." On the 8th of July, the Commons ſend word, That they are " now " ready for the Conference required by the Lords; to which the Lords anſwer, That they appoint the Conference to-morrow morning at eight o'clock, in the Painted Chamber.

11. On the 30th of March, 1626, the Lords deſire a preſent meeting of a * Committee of both Houſes. The Meſſengers naming no place for the Conference, the Meſſengers are called in again, to know whether they have warrant to name any place; they anſwer, the place deſired is the Painted Chamber.

12. On the 13th of May, 1628, the Lords deſire a Conference, at three o'clock this afternoon, in the Painted Chamber; to which the Commons anſwer, That they cannot be ready by three o'clock, for the Conference, but that they will give the Lords further knowledge in convenient time. On the 14th of May, the Commons ſend word, They are ready; and then the Lords appoint the time and place.

13. On the 22d of April, 1640, the Lords deſire a Conference, their number twelve; anſwer returned, That this Houſe will meet their Lordſhips at the time and place, with a double number, " as " the uſual cuſtom is."

14. On the 10th of November, 1640, the Lords deſire a Conference, their number is twenty; anſwer returned, That the Houſe

* It appears from the Commons Journal, that this Committee was compoſed of all the Members of both Houſes.—" The grand " Committee of the Houſe of Commons, and " the Committee of the whole Houſe of " Lords." I don't recollect any ſimilar inſtance of ſuch a conference. See in the Parliamentary Hiſtory, Vol. VI. p. 451. what paſſed on this occaſion; and the remonſtrance thereupon, preſented by the Houſe of Commons to the King, on the 5th of April.

will

will meet the Lords preſently, with a proportionable number. See alſo the 14th of December, 1641.

15. On the 8th of June, 1661, the Commons deſire a "preſent" free Conference, in "the Painted Chamber;" to which meſſage the Lords return an anſwer, That they will take the meſſage into conſideration, and ſend an anſwer by Meſſengers of their own. The following entry is immediately made in the Lords Journal, "The Lords conceived, that the Houſe of Commons by "this meſſage, demanding a "preſent" free Conference, and ap-"pointing "the place" likewiſe to be in the Painted Chamber, is "a breach of the Privileges of this Houſe; it appertaining of right "to the Lords, to appoint both the time and the place *."

16. On the 7th of January, 1691, the Lords deſire a "preſent" free Conference on the ſubject-matter of a former Conference. The queſtion being put, "To agree to a "preſent" free Conference "with the Lords, as the Lords do deſire;" it paſſed in the negative. And the Commons immediately reſolve, That a meſſage be ſent to the Lords, "to-morrow morning," to acquaint their Lordſhips, That this Houſe doth agree to a free Conference on the ſubject-matter of the laſt Conference. This meſſage is delivered to the Lords on the 8th of January, and they appoint the Conference to be held on the 9th.

17. On the 30th of December, 1692, the Lords deſire a free Conference, "To-morrow at eleven o'clock." The queſtion being put, That the queſtion for agreeing to a free Conference, as the Lords

* In a Conference held the ſame day, on the ſubject of this meſſage, which is reported in the Lords Journal of the 10th of June, the Members of the Houſe of Commons admit that this was a miſtake; and ſay, that they will take care for the future, that no ſuch meſſage ſhall be ſent to their Lordſhips, nor no ſuch entry made in their books by their Clerk. And it appears, from the entry in the Commons Journal of the 4th of June, that this miſtake was corrected accordingly.

do desire, be now put, it passed in the negative; and the Messengers are informed, the Commons will send an answer by Messengers of their own. No motion was made upon this subject on the morrow, the 31st of December, but on the 2d of January, the Commons agree to this Conference, and order Colonel Granville to go to the Lords on the 3d, to acquaint them therewith. The Lords appoint the next day, the 4th of January, for holding this Conference.

18. On the 8th of March, 1704, the Commons send a message to the Lords, to acquaint them, "That when their Lordships sent "yesterday to desire a Conference, the Commons were just rising; "but that this House will meet their Lordships at a Conference, "as their Lordships have desired, at such time as their Lordships "shall appoint; the time named yesterday being now passed."

19. On the 21st of February, 1715, the Lords desire a Conference with the Commons the next day at two o'clock, in the Painted Chamber. On the 6th of March, the Commons send a message to the Lords, That they were prevented by extraordinary business * from meeting their Lordships on the 22d of February, as was desired by their Lordships, and desire the Lords to appoint some other time. The Lords appoint two o'clock the next day, the 7th of March, for holding the said Conference, to which the Commons agreed.

* On the 22d of February, the day which the Lords had first appointed for the Conference, the Commons before two o'clock, the hour named, resolved to adjourn to Thursday, the 1st of March. The reason for this extraordinary proceeding is said, in Chandler's Debates, Vol. VI. p. 67, to have been, "That, "several Petitions being ready to be delivered "to the House of Commons in behalf of the "Scots Lords, that had been impeached and "condemned, and against whom sentence had "been pronounced, those Members, who were "for having the law executed in its full ri-"gour, in order to avoid any further impor-"tunities, moved this adjournment for eight "days; which was carried on a division only "by seven; the numbers being 162 to 155."

CONFE-

# CONFERENCE.

## III. *Managers; how named.*

1. ON the 4th of May, 1604, upon a Conference to be held with the Lords, touching the Union * of the two kingdoms, England and Scotland, every Committee was named alone, and a ſeveral queſtion made upon his name †.

* It is well known how much King James the Firſt had this object at heart, and how early in his reign he recommended it to Parliament, and with what unremitting attention he purſued it. The proceedings relating to it, between the two Houſes, laſted from April, 1604, to June, 1607, On the 21ſt of November, 1606, there is entered in the Commons Journal, the inſtrument of the Union, ſigned and ſealed by 39 Engliſh, and 28 Scottiſh commiſſioners. A Bill paſſed in this ſeſſion for aboliſhing all memory of hoſtilities between England and Scotland, which is printed in the Statutes at large, 4 Jac. I. ch. 1. —See alſo a ſummary account of theſe proceedings in the Parliamentary Hiſtory, Vol. V. p. 163 to p. 214, and compare them with the articles of Union agreed to between England and Scotland, juſt a century after.

† In general, a Committee of Members to manage a Conference is named as other Committees are, by Members calling the names of other Members, indiſcriminately, and which are taken down by the Clerk, as he hears their names. But, if it is inſiſted on, the name of each Member muſt be moved ſeparately, and a queſtion put upon his being a Manager of ſuch Conference. See the 2d vol. of this work, p. 183. N° 4.

# CONFERENCE.

## IV. *Cauſe of deſiring, to be expreſſed.*

1. ON the 5th of April, 1606, the Commons deſire a Conference with the Lords, touching matters eccleſiaſtical; to which the Lords anſwer, That, as the propoſition is very general, they deſire to be certified before hand what the cauſes and particulars are, that they may be the better prepared to give anſwer. The Commons, upon this, ſpecify the particulars, and the Conference is held.

2. On the 2d of Auguſt, 1641, the Lords deſire a Conference; to which the Commons anſwer, That their Lordſhips, having demanded a preſent Conference, without any expreſſion of the ſubject or matter of that Conference, which is contrary to the conſtant courſe of either Houſe—this Houſe cannot therefore yield to a preſent Conference. The Lords immediately ſend back a meſſage for a preſent Conference, expreſſing the ſubject upon which it is demanded.

3. On the 10th of April, 1671, the Lords deſire a Conference upon a Bill; and alſo a Conference, "touching an addreſs to be "made to his Majeſty." The Houſe, taking notice that the meſſage did not mention the ſubject-matter of the ſaid addreſs, appoint a Committee to ſearch for precedents concerning meſſages of this ſort; and return an anſwer to the Lords, That the Commons agree to the firſt Conference; but with reſpect to the other part of the meſſage, that they would ſend anſwer by meſſengers of their own. On the 11th of April, the Lords acquaint the Commons, by meſſage, That their Lordſhips conceive their anſwer ſo unparliamentary

parliamentary *, that they cannot proceed in "that" Conference; and deſire a Conference upon that anſwer †.

4. On the 22d of March, 1678, the Lords deſire a preſent Conference in the Painted Chamber; upon which the Commons come to a reſolution, "That a meſſage be ſent to the Lords, to "acquaint them, That, this Houſe having received a meſſage from "their Lordſhips, whereby they deſired a preſent Conference with "this Houſe in the Painted Chamber, it is not agreeable to the "uſage and proceedings of Parliament for either Houſe to ſend for "a Conference, without expreſſing the ſubject-matter of that "Conference." On this meſſage the entry in the Lords Journal is, "The Lords knowing of divers precedents where Conferences "have been deſired, without expreſſing the particular occaſions ‡; "yet, conſidering the important buſineſs now before them, they "think it not expedient to loſe any time in diſputing the matter;" they therefore ſend a meſſage, to deſire a preſent Conference concerning matters relating to the Earl of Danby.

5. On the 7th of December, 1768, the Lords deſire a Conference with the Commons, on the ſubject-matter of their meſſage to the Lords. The Commons order, "That the meſſengers be "acquainted, that the Commons, having ſent ſeveral meſſages this "day to the Lords, deſire to know from their Lordſhips, upon the

* At one of the Conferences, the Commons ſay, "That they conceive the Lords were "very ſudden, *by a meſſage*, to term a pro-"ceeding Unparliamentary, before reaſons "on either ſide were heard; and they con-"ceive, there is hardly a precedent to be "found, where, by a meſſage (before any "Conference) the Lords or Commons have "called any thing Unparliamentary."—See the Lords Journal of the 11th and 12th of April.

† When this matter comes to be explained, it appears that the irregularity originated from a miſtake in the delivery of the firſt meſſage from the Lords; which was intended to be, not for two Conferences, but for one Conference, on the Bill and an addreſs to the King upon ſome of the ſubject-matters of the Bill. When this had been ſo explained, and the meſſage repeated properly, the Commons agreed to the Conference.

‡ No ſuch precedents are ſtated by the Lords, nor has it hitherto appeared that any ſuch exiſt.

" ſubject-matter of which meſſage, the Lords do deſire a Con-
" ference." The Lords then deſire a Conference upon the meſſage from the Commons, ' deſiring the attendance of two Lords, to be ' examined as witneſſes.'

6. On the 29th of October, 1795, the Lords ſend a meſſage, deſiring a preſent Conference in the Painted Chamber. The entry in the Journal of the 22d of March, 1678, is read, and then the Commons return an anſwer in the words there uſed. The Lords then deſire a Conference, expreſſing the ſubject-matter on which it is deſired.

# CONFERENCE.

## V. *Form of holding.*

1. ON the 14th of November, 1558, the Lord Chancellor, Lord Treaſurer, and ſeveral other Lords, came into the Houſe of Commons, ſitting where the Queen's Privy Council of this Houſe uſed to ſit, and the Lord Chancellor declared, That by neceſſity, and for the ſafeguard of the Realm, a ſubſidy muſt be had: Mr. Speaker and the Privy Council then ſitting from them on the loweſt benches *. And after this declaration made, the Lords departed.

2. On the 14th of April, 1604, is the firſt Conference deſired by the Lords, on the ſubject of the Union †. In the courſe of this Seſſion, ſeveral Conferences are held between both Houſes, and between Committees of both Houſes, on this important ſubject ‡.

3. On the 12th of March, 1606, it was this day moved, in the Houſe of Commons, " That, ſeeing the ancient proceedings o " Parliament had heretofore been by way of Bill, and Conferences " not ſo uſual; and that now the inconvenience and diſeaſe being

* Nothing came from this Conference, as Queen Mary died three days after, on the 17th of November. See Parliamentary Hiſtory, Vol. III. p. 355.

† Sir Edward Coke, then Attorney General, was one of the Meſſengers ſent by the Lords to deſire this Conference.

‡ There is a very curious entry in the Journal, the 16th of April, 1604, of a meſſage from the King, deſiring that the Houſe of Commons would confer with the Members of the Convocation Houſe, touching ſome queſtions relating to matters of religion, then pending in the Houſe of Commons. " Upon this " meſſage there grew ſome diſpute; and it " was urged, that there was no precedent of " any Conference with a Convocation; but it " was ſaid, they would be ready to confer of " any matter of that nature with the Biſhops " as Lords of Parliament, and wiſhed that ſo " much might be made known to his Ma- " jeſty."

" found very great, in the long and painful ſtanding, and being " bare-headed, of ſuch Committees as are appointed by the Houſe " upon ſeveral occaſions, to attend Conferences with the Lords of " the higher Houſe, the Houſe would be pleaſed to enter into con- " ſideration what courſe were fitteſt to be taken for the procuring " ſome more eaſe and conveniency on that behalf:" a Committee is accordingly appointed upon this motion. On the 14th of March, Mr. Fuller reports the travail of the Committee, touching ſtanding and being bare-headed at Conferences with the Lords: He ſaid, (1.) That it appeared " from precedent," that in the 6th Edward III. the Lords and this Houſe " ſat " all together; that upon any occaſion of Conference, the Lords came down, and the Conference was held with us, " in our own place of ſitting." (2.) It was urged " for reaſon," that in all commiſſions, though the perſons were unequal in degree, yet, if they were equal in commiſſion, they " ſat " alike, and were all covered or bare-headed alike:— (3.) for " neceſſity," that it was found a great hurt, and danger to the health of their bodies, and almoſt impoſſible for the ſtrongeſt body to endure, conſidering the length of Conferences, and the crowding and thronging there *. Upon this report it was moved, That

* Notwithſtanding theſe arguments, drawn from " precedent," from " reaſon," and from " neceſſity," and reported almoſt two hundred years ſince, from a Committee expreſsly appointed to conſider of this ſubject, no alteration has been made in the form of the Commons attending at Conferences with the Lords. —The following notes and obſervations of Mr. Onſlow, explain very clearly what the proceedings at Conferences ought to be.

" On the 19th of March, 1728, the Lords deſire a Conference relating to Gibraltar and Minorca, which was agreed to by the Commons, and held the ſame day. Before the holding the Conference, a private intimation was given to ſome Members of the Houſe of Commons, that the Lords intended ſomething new, as to the ſitting and keeping on the hat of the Lord who was to manage the Conference; of which intimation to the Commons the Lords having notice, conſulted among themſelves, and upon eſtabliſhed precedents ſettled the manner, in which the Lords, who were to manage the Conference, were to behave towards the Commons; and the Members of the Houſe of Commons, being privately informed of this, allowed it to be agreeable to the practice of Parliament; and it was this:—" The Commons being at the place " of Conference, ſtanding and uncovered, and " the Lords coming in uncovered, but ſitting " down and covering their heads, the Lord " Preſident,

That Sir Francis Bacon, or ſome other, might be ſent in meſſage to the Lords about it; but, upon further debate, it was reſolved to be forborn at preſent; and the reaſon—becauſe it was probable, that the Lords might hear of the motion, conſider of the reaſon, and provide accordingly *.

4. On

" Preſident, Duke of Devonſhire, roſe up, " took off his hat, and ſtanding uncovered, " acquainted the Commons with the occaſion " of the Lords having deſired the Conference, " in words of his own, as an introduction to " the matter of the Conference; then ſat " down, put on his hat, and ſitting covered, " read a reſolution of the Lords; after which " he ſtood up, pulled off his hat, and ſtanding " uncovered, delivered the reſolution in paper " to the Manager for the Commons who was " to receive the ſame: after which the Lords " riſing, uncovered their heads to the Com- " mons, and, when they had left the place of " Conference, the Commons departed to their " own Houſe." (Note, The Commons are never covered, nor do they ever ſit at a Conference with the Lords.)—Mr. O.

" On the Conferences held on the 22d and 23d of April, 1740, upon the amendments to the Bill to prohibit commerce with Spain, it was obſerved by the Managers for the Commons, that ſome of the Managers for the Lords came into the place of Conference with their hats on, which being mentioned in their return to the Houſe of Commons, I objected to it, and ſo did ſeveral other Members of experience in the forms of the Houſe. Upon which, when there was to be another Conference, ſome private intimation was given to the Lords of it; and many of them inſiſting that it was right ſo to do, much debate happened in the Houſe of Lords upon it, and a queſtion was there ſtated, to have it determined, "for putting on the hat," but afterwards laid aſide; and then the Lords came to the next Conference in this manner, " They " had their hats on till they came juſt within " the bar of the place of Conference, then " pulled off their hats and walked uncovered " to their ſeats, then put on their hats and ſat " down; when the Conference was over, they " roſe up, pulled off their hats, and walked " uncovered from the place of Conference: " with which the Commons were ſatisfied." (N. B. That at this free Conference, according to uſage, the Lords who ſpoke, did it ſtanding and uncovered.)—Mr. O.

" At a Conference on the 25th of May, 1757, the Duke of Bedford the principal Manager for the Lords, and ſeveral other Lords, came to the Conference in the manner ſettled on the 22d and 23d of April, 1740, but not all; which being objected to in converſation with the Lords, the Lords who came to the next Conference, on the 27th of May, did *all of them* very exactly conform to what had been done by the Duke of Bedford at the preceding Conference. And ſo this matter is, I hope, now thoroughly ſettled."—Mr. O.

* The Commons before this had, on the 28th of April, 1604, complained that, with reſpect to the uſual place of meeting (the Outward Chamber near the Parliament Preſence) the Houſe doth find it full of diſeaſe and inconvenience; and deſire the place may be better fitted; not out of any humour, to win any dignity to this Houſe, but merely for conveniency.—To which the Lords reply, That this inconvenience proceedeth of themſelves of the Lower Houſe, becauſe in meeting they do exceed the number of the Committees, which the Lords do not; and if they would not exceed their number, the Lords hold

4. On the 19th of April, 1621, meſſage from the Lords to deſire a Conference with twenty-four of this Houſe, and that the Committee from hence may have power, both to hear, anſwer, and debate. This is agreed to; and that the Committee may have power to debate, but not conclude. On the 21ſt of April, Sir Edward Coke reports what paſſed at this Conference.

5. On the 8th of May, 1626, the Commons deſire a Conference with the Lords, by a Committee of both Houſes, concerning the impeachment and accuſation of a great Peer; to which meſſage the Lords anſwer, That they accepted "not a Conference" but a * "Meeting" by a Committee of both Houſes.

6. On the 19th of December, 1661, the Lords, at a Conference, propoſe that a joint Committee, conſiſting of Members of both Houſes, ſhould be appointed to ſit during the receſs for the Chriſtmas Holidays, to conſider of a plan, that had been formed for diſturbing the peace of the kingdom. The Lords appointed twelve, and propoſe, That the Commons ſhould appoint an anſwerable number. The Commons accordingly appoint a Committee conſiſting of twenty-four †.

7. On

hold the place convenient enough and of eaſe; and therefore the former place, in the Outward Chamber, to continue.

* It ſhould ſeem from this diſtinction, and from the reſolution in the Lords Journal of this day, "That a Committee be appointed to "receive what ſhall be propounded unto their "Lordſhips, by the Committee of the Com-"mons," as if, at this time, the word "Con-"ference" was not uſually adopted, unleſs it was meant that Members of both Houſes ſhould take part in the converſation; and that where they were only to hear, and not to ſpeak, it was called a "Meeting." And yet, on the 27th of January, 1628, theſe words are uſed promiſcuouſly in the Lords Journal, upon a Conference held about a petition to the King for a faſt. When, on the 11th of March, 1623, the Lords deſire a meeting with the Commons by a Committee, conſiſting of a ſelect number, Sir Edwyn Sandys ſays, "If "we give them a Meeting, we give them "an Audience, and no Conference."

† This meeting was certainly no Conference, but a joint Committee from both Houſes; and accordingly, when Mr. Waller, after the receſs, on the 10th of January, 1661, reports their proceedings, he ſtates, "That the Mem-"bers

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7. On the 23d of November, 1667, it is referred to the Committee of Privileges in the Lords, to conſider of ſome way how the Lords may be better accommodated in their ſitting in the Painted Chamber, than formerly, during Conferences with the Houſe of Commons. On the 4th of December, the Committee of Privileges offer it as their opinion, "That the table in the Painted Chamber "be ſet croſs the upper end of the chamber, where, on forms, the "Lords only are to ſit; and that a bar ſhall be put at each end of "the table, to the end no other perſons may intermingle with or "crowd the Lords; and that on the outſide of the table there be "no forms to ſit on, ſo that the Committees appointed by the Commons to manage or report Conferences, may ſtand cloſe to the "table right before the Lords; and that no perſons, who are not "Members of the Houſe of Commons, be permitted, during the "time of Conference, to come above the lower bar, or rails, in the "Painted Chamber." The Lords approve of this, and order the Great Chamberlain of England to give directions accordingly.—On the 9th of December following, the Lords, at the motion of the Great Chamberlain, order, "That a rail ſhall be ſet on that ſide "of the table in the Painted Chamber, on which the Members of "the Houſe of Commons are to ſtand at Conferences, to the end "that thoſe Members, who are appointed managers or reporters of "Conferences, may not be diſturbed by the preſs of other perſons, "ſtanding behind them*."

8. On the 6th of February, 1688, the Houſe being informed that there was ſo great a crowd in the Painted Chamber, that the

"bers of this Houſe, when they met with "thoſe appointed by the Lords, ſat down with "them, and put on their hats, without any "exception taken by the Lords." See in the 3d vol. of this work, p. 34. under title, *Joint Committee of Houſes of Lords and Commons*, N° 1, the occaſion of appointing this Joint Committee, and the report of their proceedings.

* The place in the Painted Chamber, where Conferences continue to be held, remains now fitted up in the manner, as it ſhould ſeem, as was directed by theſe orders.

Managers appointed to manage the Free Conference could not come to the table, the Serjeant is ordered to go to the Painted Chamber, "without* the mace," and to require the Members to return, in order to the room's being cleared of ſtrangers. The Serjeant informs the Houſe, That he had acquainted the Members in the Painted Chamber with the order of the Houſe, to return; but that very few of them took notice of the direction of the Houſe. The Clerk is then ordered to go with the Serjeant, and take the names in writing of ſuch Members as refuſe to obey the directions of the Houſe. Immediately after which, the Lords ſend a meſſage, That the Painted Chamber is now empty, and that their Lordſhips do expect the Members of this Houſe at a Free Conference. And the Managers went.

9. On the 29th of July, 1689, the Houſe of Lords were moved, "That whereas Serjeant Maynard and Sir Thomas Lee, two Mem-"bers of the Houſe of Commons, were to be Managers of the Free "Conference in the Painted Chamber, and were aged and lame, "they might be permitted each of them to have a ſtool to ſit on;" which the Houſe granted.

10. On the 1ſt of March, 1692, the Commons went to a Conference at the Time appointed by the Lords; but the Managers returned, and acquainted the Houſe, That having been at the place appointed for the Conference, they underſtood the Houſe of Lords was not yet ſat. Upon this a Conference is deſired with the Lords upon the method of proceeding between the two Houſes. But the Lords immediately ſend down a meſſage, "That the Speaker of

* The Painted Chamber belongs to the Houſe of Lords, and therefore it would have been improper for the Serjeant to have gone "with the mace." His orders extended only to require the return of the Members of the Houſe of Commons. The clearing the Chamber of ſtrangers, was the duty of the Lords; as ſoon as the Members of the Houſe of Commons are withdrawn, the Lords ſend word, that the Painted Chamber is now empty.

"the

" the Houſe of Lords * living two miles out of town, and the badneſs " of the road at this preſent, was the only occaſion of their Lord- " ſhips not coming to the Conference at the time appointed."

11. On the 16th of January, 1702, the Managers of the Commons went to a Free Conference in the Painted Chamber, on the Bill for preventing occaſional conformity; but from the crowd they could not get to the table. The Commons firſt ſend a meſſage to the Lords, to deſire they will give orders for preventing this interruption. The Lords ſend word, " They have given orders; but " unleſs the Commons will ſend for their own Members, it will be " difficult to be done." The Commons then ſend the Serjeant, and afterwards the Clerk Aſſiſtant, to ſummon the Members, and take the names of ſuch as refuſe to come. And when all are come in, the Houſe order, " That no Member do preſume to go out of " the Houſe, till the Managers are gone out for the Free Con- " ference, and until Mr. Speaker do leave the Chair."

12. See the proceeding on the Conferences, holden at the deſire of the Commons, touching the amendments made by the Lords to the Bill for prohibiting commerce with Spain, on the 25th and 28th of March; and on the 14th and 17th of April, 1740. On the 22d of April, the Managers from the Commons going to the Conference at the time appointed, and being returned, Mr. Walpole reported, " That they had waited a conſiderable time, but that, " the Lords not coming, the Managers had thought it their duty

* This Speaker of the Houſe of Lords, was Sir Robert Atkyns, the Lord Chief Baron: he not coming, the Lords choſe the Duke of Somerſet Speaker, *pro tempore*. As ſoon as Sir Robert Atkyns came, in the courſe of the day, he took his ſeat as Speaker. He was Speaker of the Houſe of Lords, from the 19th of October, 1689 (when he was firſt appointed by a Commiſſion from the King, in the room of the Marquis of Halifax, who had acted as ſuch till that time from the Revolution) until the 23d of March, 1692-3, when the Great Seal was given to Sir John Somers, as Lord Keeper. See the particulars of Sir Robert Atkyns's Life, in the New Biogr. Brit. Vol. I. p. 324.

" to

" to wait no longer*." On the 23d, the Lords, by Meſſage, make an excuſe for this, and appoint another time for the Conference.

* It appears from the Lords Journal of the 22d of April, that, after the Lords had been informed, That the Managers of the Commons were ready, in the Painted Chamber, and the Lords had appointed their own Managers, a debate aroſe touching the manner of proceeding to and at the ſaid Conference.—This was the cauſe of the Lords not coming at the time they had appointed. This was one of the Conferences mentioned before by Mr. Onſlow, in the note, p. 25.

CONFE-

# CONFERENCE.

## VI. *Rules of ſpeaking at.*

1. ON the 7th of February, 1580, upon motion made by Mr. Norton, it is ordered, "That ſuch perſons as ſhall "be appointed by this Houſe at any time to have Conference "with the Lords, ſhall and may uſe any reaſons or perſuaſions "they ſhall think good in their diſcretions, ſo as it tend to the "maintenance of any thing done or paſſed this Houſe, before ſuch "Conference had, and not otherwiſe: But that any ſuch perſon "ſhall not in any wiſe yield or aſſent, at any ſuch Conference, to "any new thing there propounded, until this Houſe be firſt made "privy thereof, and give ſuch order."

2. It appears as if, at a Conference holden touching the grievances ariſing from purveyance, and which is reported on the 20th of February, 1605, ſome reflections had been thrown out againſt Mr. Hare a Member: It is immediately reſolved, That Mr. Hare might be cleared by this Houſe firſt, and then a meſſage to the Lords, 'That their Lordſhips would not in future cenſure any without the 'judgment of this Houſe.' Mr. Hare is juſtified, and a meſſage ſent to the Lords, with the deſire of this Houſe, on the 22d of February, 'That they forbear hereafter all taxations and reprehen-'ſions in Conferences*."—See the 24th of February.

3. At a Conference, which Sir Edward Coke reports on the 9th of Auguſt, 1625, he ſays, The Lords would have ſent another meſſage by him; but he refuſed, as having no authority; and therefore deſired them to ſend it by meſſengers of their own.

* There is no entry upon this ſubject in the Lords Journal.

4. On

4. On the 4th of February, 1640, Mr. Treaſurer acquaints the Houſe, That he had, according to the commands of the Houſe, delivered to the Lords, at a Conference, the vote of this Houſe, concerning the friendly aſſiſtance to be given to the Scots;—and that, after the vote was read, the Lords deſired them to hear ſomething that the Earl of Briſtol had to ſay; but becauſe it was no Free Conference, and that it was a Conference prayed by this Houſe, to which, the Houſe conceived, the Lords came only to hear, and not to propound any thing, and at which no reporters were by this Houſe appointed, it was thought, that, according to the ancient courſe of Parliaments, Mr. Treaſurer had no authority, nor could report any thing that was at this Conference propounded by the Lords: And therefore no report was made.

5. On the 27th of July, 1663, on the report in the Houſe of Lords of a Conference touching the Bill of Uniformity, the Lord Privy Seal acquainted the Lords, that one of the Members of the Houſe of Commons had ſaid, "That what was ſent down from this "Houſe to them, touching this Bill, had neither juſtice nor prudence "in it;" which words the Lords held derogatory to the honour of this Houſe, and the Privileges of Parliament: And they reſolve, "That this Houſe will, in the next ſeſſion, take into ſerious conſi- "deration (before they enter upon any other matter whatſoever) "how to provide for the future, that their privileges may not be "infringed or broken."

6. On the 4th of January, 1692, the Commons, though at a Free Conference, decline proceeding to debate the ſubject-matter of the Conference, till they had acquainted the Commons with what the Lords had ſaid. See this Caſe under the next Title, "Free "Conferences."

7. On

7. On the 20th of March, 1696, a complaint is made to the Houſe, that a Member of this Houſe, at a Free Conference with the Lords, had argued againſt a Bill, ſent up by this Houſe to the Lords. The Houſe order the Member to be named. "Sir Samuel Bernardiſton." An account is then given to the Houſe, of what he ſaid, and how he argued againſt the Bill: and Sir Samuel Bernardiſton being heard in his place, and being then withdrawn; the Houſe reſolve, "That in conſideration of his great age and infirmities, and of his ſufferings and ſervices* formerly in maintaining the rights of this Houſe, Sir Samuel Bernardiſton be called in, and in his place "only" reprimanded by Mr. Speaker;" which is done accordingly.

8. On the 13th of June, 1701, Mr. Harcourt reports from a Free Conference, ſome expreſſions uſed at the Conference by the Lord Haverſham; which had been immediately objected to by Sir Chriſtopher Muſgrave; and which the Managers thought to be ſo great an aſperſion on the honour of the Houſe, that they conſidered themſelves, as obliged in duty inſtantly to withdraw. The Commons reſolve, (1.) "That John Lord Haverſham hath, at the Free "Conference this day, uttered moſt ſcandalous reproaches, and falſe "expreſſions, highly reflecting upon the honour and juſtice of the "Houſe of Commons, and tending to the making a breach in the "good correſpondence between the Lords and Commons, and to the "interrupting the public juſtice of the Nation, by delaying the "proceedings on the impeachments:" And (2.) "That John Lord "Haverſham be charged before the Lords, for the words ſpoken by "the ſaid Lord, this day, at the Free Conference: And that the "Lords be deſired to proceed in juſtice, againſt the ſaid Lord

* This refers to what paſſed in the year 1668, on the diſpute between the Lords and Commons, in the caſe of Skinner and the Eaſt India Company—when Sir Samuel Bernardiſton was fined and impriſoned by the Lords. See the Report of this matter, made by the Solicitor General Finch, on the 21ſt of October, 1669—in the 3d vol. of this work p. 345.

" Haverſham; and to inflict ſuch puniſhment upon the ſaid Lord as " ſo high an offence againſt the Houſe of Commons does deſerve." And that Sir Chriſtopher Muſgrave do carry the ſaid meſſage. On the 14th of June, the Lord Haverſham deſires from the Lords, to have a copy of the Charge; which is granted him. On the 19th he delivers in his Anſwer; which is brought to the Commons on the 20th of June. No further proceeding is had upon it in the Houſe of Commons, as the Parliament is prorogued on the 24th; but the Lords upon that day reſolve, " That the Commons not " having proſecuted their charge, for words ſpoken by Lord " Haverſham at a Free Conference, the ſaid charge ſhall be diſ- " miſſed."

9. At a Free Conference held on the 25th of February, 1702, on the ſubject of the public accounts; the Lords order their Managers, " That they be reſtrained, not to permit the Commons to diſpute " the Lords' juriſdiction*."

* See the proceedings in this caſe at length in Vol. III. p. 120, and in the Appendix to that Vol. N° 13.

CONFE-

# CONFERENCE.

## VII. *Free Conference.*

1. BEFORE the Free Conference, which was held touching the queſtion of the Poſt Nati, it was reſolved, on the 23d of February, 1606, That the Committees might beforehand agree amongſt themſelves to diſtribute the parts of the argument which was to be urged *; and to conſider upon whom it might be fitteſt to impoſe the maintenance of every ſeveral head †.

2. On the 19th of May, 1628—See, in the Journals of both Houſes, the proceedings at the Free Conferences touching the Petition of Right ‡.

* On the 24th of February, this Committee report the names of ſeveral perſons for the particular topics; and out of theſe the Houſe ſelect,

Sir Francis Bacon,—To make the entrance by way of preamble.

Sir Edwyn Sandys, Sir Roger Owen, } To offer reaſons and precedents touching the moral law of nations—Jus gentium.

Sir John Bennet, Dr. James, } To aſſiſt for matter of civil law.

Mr. Solicitor, Mr. Hyde, Mr. Brock, Mr. Crewe, Mr. Hedly, } To maintain argument for matter of common law.

† See in the Journal of the 13th, 14th, 17th, and 18th of February, the heads of the arguments on both ſides of the queſtion.—See alſo Sir Edward Coke's Report of Calvin's Caſe, in the 7th Report, and the argument of Sir Francis Bacon, then Solicitor General, in his Works, Vol. II. p. 153. Theſe, with Serjeant Moore's Report of the proceedings in Parliament on this queſtion, and Lord Elleſmere's ſpeech in the Exchequer Chamber, as publiſhed by himſelf, are collected together, and printed in the 11th Vol. of the State Trials, p. 75.

‡ For the debates upon this very important proceeding, and particularly upon the ſaving of the King's ſovereign power, which had been added by the Lords—See the 1ſt Vol. of Ruſhworth's Collections, page 561, et ſubſ.

3. On the 5th of February, 1666, the Lords refuſe a Free Conference, after two Conferences held, upon the ſubject-matter of Lord Mordaunt being permitted, upon his trial on an Impeachment, to ſit within the Bar *.

4. The Houſe of Commons, on the 12th of November, 1667, having carried up the impeachment againſt Lord Clarendon, deſired, That he might be ſequeſtered from Parliament, and forthwith committed to ſafe cuſtody—the Lords deſire a Conference upon this meſſage on the 15th, in which they communicate to the Commons their reſolution and their reaſons, for not agreeing to this requeſt. The Commons deſire another Conference, which is held on the 19th of November; in which they aſſign their reaſons for inſiſting upon their demand.—On the 21ſt of November, the Lords deſire another Conference; to which the Commons anſwer, That they conceive there was a miſtake in this laſt meſſage, for that it ſhould have been for a "Free" Conference, by the uſual courſe of proceeding between the Houſes †.

* See the proceedings upon theſe Conferences, and Free Conferences, in the Appendix to this Vol. N° 9.

† This brought on a diſcuſſion between the two Houſes, as to the order of their proceeding —the reaſons alledged by each party are in the Lords Journal of the 21ſt, 22d, and 23d of November. On the 23d of November, the Commons acquieſce in a Conference, as deſired by the Lords meſſage of the 21ſt, without inſiſting on its being a "Free" Conference.—This Conference is held; and on the 26th of November, the Commons demand a "Free" Conference, upon the ſubject-matter of this laſt Conference. This meſſage is referred by the Lords to their Committee of Privileges, who report on the 27th, and then the Lords agree to a "Free" Conference.—The report of this Free Conference, which is held on the 28th, is entered in the Lords Journal of the 29th of November, 1667. —On the 2d of December, the Lords acquaint the Houſe of Commons, by meſſage, "That they are not ſatisfied to commit the "Earl of Clarendon, and ſequeſter him from "Parliament, before particular reaſons are "ſpecified or aſſigned." Upon which the Commons reſolve, "That this refuſal of the "Lords is an obſtruction to public juſtice, "and is of evil and dangerous conſequence." —See in the Appendix to this vol. N° 6, the Report of the Free Conference of the 28th of November.

5. On

5. On the 26th of January, 1670, the Commons diſagree to the amendments made by the Lords to a Bill, and deſire a Conference to acquaint them, and to aſſign their reaſons for ſuch diſagreement; which Conference is accordingly held on the ſame day.—On the 3d of February, the Lords deſire another Conference, which is held upon the 4th; at which the Lords aſſign their reaſons for not agreeing to the reaſons of the Commons, and for adhering to their amendments. The Commons, on the report of this Conference, reſolve, That they are not ſatisfied with the reaſons given by the Lords; and * then deſire a "Free" Conference upon this ſubject—this is held on the 6th of February; and ſeveral "Free" Conferences are afterwards held, on the 9th and 11th of February.

6. On the 20th of April, 1671, the Lords deſire a "Free" Conference on the ſubject matter of the laſt Conference, on a Bill to prevent Frauds in ſelling of Cattle;—this is agreed to; but the Managers are ordered to acquaint the Lords of their miſtake, in aſking a "Free" Conference, when there had been but one Conference in that matter.—The Lords admitted that this was a miſtake.

7. On the 15th of May, 1675, the Commons deſire a Conference upon a meſſage ſent from the Lords, in relation to a warrant, ſigned by the Speaker;—this is agreed to, and held. On the 20th of May, the Lords deſire another Conference upon this ſubject—this is reported on the 21ſt; and then the Commons, not being ſatisfied with the reaſons alledged by the Lords in ſupport of their meſſage, demand a "Free" Conference.

8. The Lords, on the 2d of February, 1688, having made amendments † to a reſolution of the Commons, about the vacancy of the Throne,

* This proceeding is perfectly regular, and conſonant to the practice that has ſince been obſerved by both Houſes.

† Theſe amendments were to change the the word "abdicated," which the Commons had uſed, to expreſs James the Second's dereliction

Throne, and which had been ſent up for their Concurrence—to theſe amendments the Commons diſagree—and deſire a Conference to aſſign their reaſons. This Conference is held on the 4th of February. On the 5th of February, the Lords deſire another Conference, which is held on that day, at which the Lords acquaint the Commons that they inſiſt upon their amendments—and give their reaſons for inſiſting. The Commons ſtill diſagree to the Lords amendments, and then deſire a "Free" Conference—which is held on the 6th of February; and on the 7th, the Lords ſend word, that they agree to the vote of the Commons without any alteration.

9. The Lords having amended a Bill from the Commons for abrogating the oaths of allegiance and ſupremacy, and ſubſtituting others—to theſe amendments the Commons diſagree, and at a Conference aſſign reaſons. The Lords inſiſt upon their amendments, and at another Conference aſſign their reaſons for inſiſting. The Commons then, on the 22d of April, 1689, demand a "Free" Conference; which is held on that day. On the 24th of April the Lords demand "a Conference" on the ſubject-matter of this Bill. This irregularity being taken notice of, a meſſage is ſent to the Lords to acquaint them, "That the Commons do not conceive it "to be according to the courſe of Parliament, to have a meſſage "for "a Conference †," after there hath been "a Free" Confe-"rence upon the ſame ſubject." Upon which meſſage the Lords immediately deſire "a Free Conference."

10. On the 31ſt of May, 1689, after ſeveral Free Conferences on amendments made by the Lords to a Poll Bill, the Lords reſolve to adhere to their amendments; and the Commons reſolve to adhere

liction of the government, into the word "deſerted;" and to leave out the words "and that the throne is thereby vacant." The debate at the Free Conference held between the two Houſes upon this ſubject, are collected and printed in 1695, in a ſmall volume,

† See the account of this proceeding in Grey's Debates, Vol. IX. p. 229.

to the Bill, without the amendments propoſed by the Lords, upon which a Committee is appointed by the Commons, to conſider of the methods of proceeding between the two Houſes, upon Conferences in paſſing of Bills. Further diſputes ariſing, on the Conferences held upon the Bill for reverſing the judgments againſt Titus Oates, on the 6th of Auguſt a Conference is deſired with the Lords, for ſettling the methods of proceeding upon Conferences, and Free Conferences, between the two Houſes. On the 13th of Auguſt, the Committee appointed to prepare what is to be offered to the Lords at this Conference make their report *.

11. On the 16th of July, 1689, a Free Conference is demanded by the Commons, after two Conferences, which had been held on amendments made by the Lords to the Bill of Rights.—So on the 27th of July, upon the amendments made by the Lords to a Bill for collecting duties upon coffee, &c.

12. The Lords having amended a Bill relating to taking the Oaths of Supremacy in Ireland, the Commons diſagreed to ſome of theſe amendments, and on the 1ſt of December, 1691, communicate to the Lords, at a Conference, their reaſons for this diſagreement. On the 5th of December, the Lords hold another Conference with the Commons, on the ſubject of theſe amendments, and on the 9th of December, the Commons deſire (not a "Free *" but) another Conference on the ſame ſubject.

13. On

* This report being probably ſettled by Mr. Somers, who was then Solicitor General, and Chairman of the Committee, and containing much curious matter, touching the reverſal of erroneous judgments in the Courts of Law, and concerning the rules of the Houſes upon Conferences, is inſerted in the Appendix, N° 2. It does not appear that this Conference ever was held; as the Lords, upon receiving the meſſage, appoint a Committee to ſee what precedents may be found for granting of Conferences, after adhering; which Committee does not make any report.

† This proceeding was regular; becauſe the object of this Conference was, not to adhere, on the part of the Commons, to their former diſagreement (if it had, this ſhould have been a "Free Conference") but to ſuggeſt

13. On the 31ſt of December, 1691, the Commons, after two Conferences, deſire a Free Conference on the ſubject of an amendment made by the Lords to a Bill for the regulating of Trials in caſes of treaſon. This Free Conference is held on the 5th of January. Another Free Conference is held on the 9th; and upon the 13th of January, Mr. Montagu reports what paſſed at both theſe Conferences *.

14. The Commons having, on the 21ſt of December, 1692, communicated to the Lords, at a Conference, a reſolution they had come to on the 20th, approving Admiral Ruſſell's conduct, after conſidering ſeveral papers, which had been communicated to them by the Lords, at a former Conference—the Lords, on the 30th of December, deſire a "Free" Conference. This is held on the 4th of January; when the Lords complain of this proceeding on the part of the Commons, "That it was an unuſual proceeding, becauſe "the vote was concerning a matter of fact only, without giving "any reaſons to the Lords, which induced the Commons to make "that vote." The Commons acquaint the Lords, "That though "they had, to preſerve a fair and good correſpondence with their "Lordſhips, agreed to this Free Conference, they had no power to "proceed to debate the matter till they had acquainted the Com-"mons with what their Lordſhips had ſaid †."

15. On

geſt amendments to the amendments made by the Lords, which introduced new matter, and to which the Lords agreed on the 10th of December, and acquaint the Commons by meſſage.

* This report, containing much parliamentary learning, touching the trial of Peers in Parliament, and of Biſhops, as well for the offence of high treaſon as for other crimes, and alſo relating to the Court of the High Steward; and being managed on the part of the Commons by Sir George Treby, and Mr. Somers (the Attorney and Solicitor General) and others of the greateſt ability, as well in the Houſe of Commons as in the Houſe of Peers; and not being printed in the Lords Journal—is, together with a report made to the Houſe of Lords on the 18th of January, 1691, from a Committee appointed to inſpect commiſſions for Lords High Stewards, upon trials of Peers out of Parliament, inſerted in the Appendix, N° 3.

† In this the Commons were regular. The Lords had made a miſtake in demanding a "Free"

15. On the 20th of March, 1696, the Lords reſolve, That the manner of informing the Commons of their Lordſhips adhering to their Amendments to a Bill, is at a Free Conference *, where they aſſign their reaſons.

16. On the 25th of January, 1702, the Lords being moved, "to "take into conſideration what method is to be uſed in returning "to the Houſe of Commons a Bill, where the Lords, after a Free "Conference, have adhered to moſt of their Amendments"—a Committee is appointed to ſearch precedents relating to this matter. On the 29th of January, the Lord Steward reports from this Com- "mittee, That their Lordſhips find the Bill is to be delivered at a Free "Conference, ſometimes with, and ſometimes without reaſons." And the Committee report the ſeveral precedents †. After which it is agreed, to deliver the Bill at a Free Conference.—This Free Conference is held on the 1ſt of February.

17. On the 27th and 28th of June, 1717, two Conferences having been held, touching the mode of proceeding to make good the Articles of Impeachment againſt Lord Oxford; and the Lords perſiſting, "That the Commons be not permitted to make good the "Articles for High Crimes and Miſdemeanors, till judgment be firſt "given on the Articles for High Treaſon"—the Commons, o

n the

"Free" Conference. They ſhould have only demanded a Conference, and there ſtated their reaſons for thinking the proceeding informal; —and if the Commons had, at a ſubſequent Conference, juſtified what they had done, then the Lords might regularly have demanded a "Free" Conference. This miſtake, on the part of the Lords, reduced this "Free" Conference to a common Conference. The Lords, however, had not committed this error, from want of conſideration; as, on the 22d of December, they appoint a Committee to inſpect their Journals, to ſee whether any Free Conferences have been deſired with the Commons, wherein the Houſe have not diſagreed with them. On the 29th, this Committee make their report; and on the 30th of December, the Lords ſend their meſſage for this Free Conference.

* This was after a Free Conference, at which the Commons had inſiſted on their diſagreement to the amendments made by the Lords to a Bill paſſed by the Commons.

† See the references to theſe precedents in the Lords Journal.

28th of June, desire a Free Conference; to which, on the 1st of July, the Lords reply, by message, "That the subject-matter of the "last Conference being concerning a point of judicature determined "by their Lordships after the Trial begun, their Lordships do not "think fit to give a Free Conference, as desired by the Com-"mons *."

18. The Lords having amended a Bill for prohibiting commerce with Spain; the Commons, on the 25th of March, 1740, disagree to these amendments. On the 28th of March a Conference is held, to communicate to the Lords the reasons for this disagreement. On the 14th of April, another Conference is held, at which the Lords assign their reasons for insisting on some of their amendments.—These reasons are considered on the 17th of April, when the Commons insist on their disagreement, and demand a Free Conference with the Lords upon this subject; which is held on the 23d †; and on the 24th the Lords, "by message," acquaint the Commons they do not insist on their amendment.

19. On the 24th of May, 1757, the Commons desire a Conference with the Lords, to communicate reasons for disagreeing to amendments made by the Lords to the Militia Bill. This Conference is held on the 25th. On the 27th, another Conference is held, at which the Lords give their reasons for insisting upon some of their amendments. These reasons are taken into consideration on

* Upon this message, the Commons immediately resolve to desire a Conference; to which the Lords agree. It is held on the 1st of July; the Commons state, "They appre-"hend the subject-matter of the last Confe-"rence not to be a point of judicature, but a "point relating only to the prosecution of the "Commons; it having arisen before any "matter of judgment had come before the "Lords upon the trial." Another Conference is held upon the same day, at the desire of the Lords, at which the Lords acquaint the Commons, "That their Lordships insist upon "denying a Free Conference, as desired by "the Commons."

† See in the Lords Journal of the 23d of April, their report of what passed at this Free Conference. This is the Conference which is referred to by Mr. Onslow, in the note in this vol. p. 25.

the

the 7th of June, when the Commons amend ſome of the Lords amendments, and do not inſiſt upon their diſagreement to the reſt. The Commons then demand "a" * Conference upon the ſubject-matter of the laſt Conference, which is holden on the 8th; and the Lords, on the 8th, agree to the amendments made by the Commons; which agreement they communicate "by meſſage †."

## OBSERVATIONS *on* CONFERENCES.

Very few Obſervations ariſe out of this ſubject, that have not already occurred, either in the reaſons and arguments of the Lords and Commons, which are printed in the Appendix, or in the Notes on the ſeveral preceding caſes.

The principal rules, to which both Houſes have thought themſelves bound to conform, in the manner of demanding or holding Conferences, are reducible under one or other of the following heads:

(1.) Firſt,

That the Conference, if it is upon the ſubject of a Bill depending between the two Houſes, muſt be demanded by that Houſe, which, at the time of aſking the Conference, is in poſſeſſion of the Bill; and though ſome of the more ancient precedents are of inſtances, where

* Had the Commons inſiſted upon their diſagreements to the Lords amendments, they ſhould have demanded a "Free Conference;" but, as they only amend the Lords amendments, this proceeding was regular, as before, N° 12.

† The Bill being with the Lords, they communicate their agreement "by meſſage." If this proceeding had been reverſed, and the Bill had been with the Commons, the more regular proceeding on their part would have been, as is obſerved before in the note, p. 12, to deſire another Conference, to deliver this agreement, and the Bill; as the Bill muſt remain ultimately with the Lords. The ſame obſervation applies to the proceeding in N° 18.

one Houſe of Parliament has demanded of the other their reaſons for bringing in, or amending, or refuſing to agree to, certain Bills, theſe proceedings (as they were very properly declared to be irregular as long ago as the year 1575, in the caſe of Lord Stourton's Bill; and again in 1661, upon the Bill for the Execution of Perſons attainted of High Treaſon) ought not to be followed as examples; becauſe, inſtead of compoſing differences, which is the object of a Conference, they tend rather to raiſe diſputes, touching the privileges and independency of that Houſe, of whom ſuch reaſons are demanded.

The ſubjects, upon which it happens that Conferences are moſt frequently demanded, are, where amendments have been made by one Houſe to a Bill paſſed by the other, to which amendments the Houſe deſiring the Conference have diſagreed; and the purpoſe of the Conference is to acquaint the Houſe which firſt made the amendments, with the reaſons for ſuch diſagreement; in order that, after conſidering thoſe reaſons, the Houſe may be induced, either not to inſiſt upon their amendments, or may in their turn aſſign ſuch arguments for having made them, as may prevail upon the other Houſe to agree to them.

Where, from inattention to the forms eſtabliſhed upon this occaſion between both Houſes, either Houſe has ſent a meſſage that they diſagree to amendments, and has not deſired a Conference to aſſign their reaſons for ſuch diſagreement, we find that the Bill has been re-delivered, "to the end that the due courſe of Parliament in the "tranſmitting of things of this nature may be obſerved." If the Houſe, which amend the Bill, are not ſatisfied and convinced by the reaſons urged for diſagreeing to the amendments, but perſevere in inſiſting upon their amendments, the form is, to deſire another Conference; at which, in their turn, they ſtate their arguments in favour of the amendments, and the reaſons why they cannot depart from them;

them; and if, after ſuch ſecond Conference, the other Houſe reſolve to inſiſt upon diſagreeing to the amendments, they ought then to demand a "Free" Conference, at which the arguments on both ſides may be more amply and freely diſcuſſed.—If this meaſure ſhould prove ineffectual, and if, after ſeveral Free Conferences, neither Houſe can be induced to depart from the point they originally inſiſted upon, nothing further can be done, and the Bill muſt be loſt.

(2.) Secondly,

Whenever a Conference is demanded by either Houſe, it is the ſole privilege of the Lords to name the time and place at which it ſhall be holden.—The Commons may, if they ſee any inconvenience either in the place or time appointed by the Lords, diſagree to the holding of the Conference under thoſe circumſtances, and may ſtate to the Lords their reaſons for not complying with their requeſt; it then reſts with the Lords, if they think proper, to change the time or place;—but in no caſe will the Lords permit the Commons, nor indeed have the Commons ever claimed the privilege, to name the place or time of meeting *.—It has not of late been cuſtomary for either Houſe, in demanding a Conference, to acquaint the other Houſe with the number of Managers they have appointed; but whenever this is done, the form is, and it was an ancient rule as long ago as in the year 1604, "That the number of the Commons named "for the ſaid Conference are always double to thoſe of the Lords †."

(3.) Thirdly,

Another eſſential rule, which ought to be obſerved in demanding a Conference, is, That the Houſe, which aſk the Conference, do in

* See note §, p. 14—and N° 9, p. 15—and N° 15, p. 17, with the note.

† So in meſſages to the King, by Members of both Houſes, the number of thoſe appointed by the Commons, is double that appointed by the Lords.—See alſo a meſſage ſent to the Prince of Wales on the 29th of January, 1789.

their

their meſſage clearly expreſs the ſubject-matter upon which the Conference is deſired. And it appears from all the precedents, that, where this has been omitted, the Houſe, to which the application has been made, have aſſigned this omiſſion as a reaſon for their not complying with the requeſt. The obſervance of this form appears to be not only a matter of civility from one Houſe of Parliament to the other,—that in aſking their attendance, they ſhould be informed of the ſubject upon which that attendance is required;—but that it is neceſſary ſuch information ſhould be given, in order to enable the Houſe to judge, whether the matter is of ſufficient importance to induce them to agree to the Conference; or, which is ſtill more material, whether the Conference demanded may not relate to a ſubject, upon which, conſiſtently with the preſervation of their privileges, they cannot conſent even to meet and confer.—Many caſes of this ſort might be ſtated, in which the excluſive claims of each Houſe, and their independency, one of the other, with their ſole right of judging of the conduct of their own Members, would juſtify them in refuſing a Conference, at which any of theſe ſubjects might be brought into diſcuſſion.—However this form, of expreſſing the ſubject-matter upon which a Conference is deſired, has not always been ſo ſtrictly obſerved, particularly in later times, as not to admit of very general matters being alleged, as ſubjects for demanding a Conference—A meſſage, to deſire a Conference "upon a matter, "highly concerning the honour of his Majeſty, and his Govern-"ment"—Or, "upon a matter in which the honour and intereſt of "the public are eſſentially concerned"—Or, "upon a ſubject "highly important to the privileges of both Houſes of Parliament" —without ſpecifically ſtating, what intereſt of the public, or what privilege of Parliament, is to be the immediate topic of diſcuſſion, has, with ſeveral other ſubjects as general, been held to be ſufficient to juſtify either Houſe of Parliament in conſenting to a Conference ſo demanded;—but of this that Houſe muſt be the judge, to which the requeſt is made; and if they are not ſatisfied, they will decline

agreeing to the Conference demanded, until they have further and more explicit information upon what ſubject their preſence is required.

(4.) Fourthly,

With reſpect to the form and manner of holding Conferences, and the rules to be obſerved by the Managers of both Houſes in coming to, holding, and departing from, the place of Conference, theſe are all ſo clearly and accurately laid down by Mr. Onſlow, in the three inſtances *, which happened whilſt he was Speaker, in the years 1728, 1740, and 1757, that it is impoſſible to add any further information upon that ſubject †.

(5.) Fifthly.

Before the Managers go to a Conference, which is not a Free Conference, it is uſual for the Houſe, deſiring the Conference, to appoint a Committee to draw up reaſons to be offered in ſupport of the meaſure which the Houſe has adopted;—theſe reaſons are reported from the Committee; and, when agreed to by the Houſe, are ordered to be communicated at the Conference to the Managers appointed by the other Houſe. The Managers therefore having no other authority, than to read and deliver in ſuch reaſons for the proceeding as the Houſe have agreed to, it is irregular for any Member to ſpeak at ſuch Conference, or to ſuggeſt any thing, unleſs by way of introduction to the delivery of the reaſons. It is as irregular for

* See note, p. 24 and 25.

† "During the time of a Conference, the Houſe can do no buſineſs, till the Conference is over; and the practice is, as ſoon as the names of all the Managers are called over, and they are gone to the Conference, for the Speaker to leave the Chair, without any queſtion, and he reſumes the Chair again, on the return of the Managers from the Conference.—This is expreſsly ſtated in the Journal of the 16th of January, 1702.—It is the ſame whilſt the Managers of an impeachment are at "the Houſe of Lords," as I remember the Speaker, Mr. Compton, did, at the trial of Lord Macclesfield.—He then came, "without his gown," and ſtood privately in the door-way of the Houſe of Lords, next to the box appointed for the Managers."—Mr. O.

When

for any of the Managers on the other ſide, ("who, as was properly "obſerved on the 4th of February, 1640, come only to hear and "not to propound any thing,") to introduce any matter at the Conference, either from themſelves, or from the Houſe which appointed them; and any proceeding of that ſort would be, as it was then ſtated to be, "not according to the ancient courſe of Parliaments." The Managers on neither part have, at ſuch a Conference, any authority to go beyond the inſtructions they have received; thoſe, who are appointed by the Houſe deſiring the Conference, are merely to read and communicate the reaſons already adopted; the others to hear and receive thoſe reaſons, which they are afterwards to report, from the Conference, to the Houſe, of which they are Members.

(6th.) Sixthly,

If the reaſons, alleged on both ſides, fail of their effect, to induce either Houſe to deſiſt from that meaſure, which is the ſubject-matter of the Conference, nothing remains but to hold a "Free" Conference; which admits a more liberal diſcuſſion of the queſtion under conſideration, and gives an opportunity for the Managers, individually, and not reſtrained by any preciſe form of argument, to urge ſuch reaſons as appear to them to be of weight, to ſupport the cauſe in which they are engaged, and that may beſt tend to influence the Houſe to which they are addreſſed.—Here, though, as in the inſtance of the Poſt Nati *, the Houſe may diſtribute amongſt the Managers the ſeveral heads and topics upon which they are to inſiſt, the arguments in ſupport of thoſe topics muſt be ſuggeſted by themſelves.—A Free Conference is uſually demanded after two Conferences have been holden without effect; and though in the inſtance in 1667, relating † to Lord Clarendon, the Commons ac-

——When the trial is in Weſtminſter Hall, and the Houſe of Commons attend, as a Committee of the whole Houſe, there the Speaker has a place aſſigned him, in the gallery, where he attends "in his gown."

* See the note to N° 1. p. 35.

† See before N° 4. p. 36, and the note.

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quieſced in a third Conference, without inſiſting that that ſhould be a "Free" Conference, I apprehend that the Commons were juſtified in objecting to this, and ſtating as they did to the Lords, "That, "according to the uſual courſe of proceeding between the two "Houſes, there was a miſtake in the Lords deſiring a Conference, "and that it ſhould have been a Free Conference."

After one Free Conference, no Conference but a Free Conference can be holden touching the ſame ſubject; unleſs ſome queſtion of Privilege, or of the Order of Proceeding, ſhould ariſe, from the conduct of any of the Managers, or of either Houſe to the other, or that ſome alteration ſhould have been made in the matter, as it ſtood at the former Free Conference; in that caſe, a Conference, not a Free Conference, may be demanded upon that particular matter *.

Under one or other of theſe heads may be claſſed, I believe, every thing that is eſſentially material for either Houſe to obſerve, in demanding, or in conſenting to, or holding, Conferences between the two Houſes, as well upon amendments to Bills, as upon any other ſubject whatſoever.—Theſe forms have been eſtabliſhed by long experience, and confirmed by repeated and almoſt invariable uſage; and therefore, though in ſome circumſtances, relating to the time and place of meeting, and to the conveniency for the attendance of the Managers, the Lords appear to have ſome advantages above the Members of the Houſe of Commons, inconſiſtent with that equality which in other inſtances ſubſiſts between the two Houſes, it is for the public advantage that theſe forms ſhould be ſtrictly adhered to. The object, upon this occaſion, being to preſerve order and regularity in the proceedings between two great aſſemblies, this cannot be attained with more certainty, than by obſerving known and long-eſtabliſhed rules, whatever thoſe rules may be, or to whatever objections they may appear to be liable.

* See under "Free Conference," N° 9, 10, 12, and 19.

# IMPEACHMENT.

## CHAPTER THE FIRST;

*From the earlieſt Records, to the End of the Reign of Queen Elizabeth.*

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I. *Impeachment by the Commons.*
II. *Judgment by the Lords.*
III. *Bills of Attainder.*
IV. *Bills of Pains and Penalties.*

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### I. *Impeachment by the Commons.*

1. IN 1376, the 50th year of Edward III. Richard Lyons and others, merchants of London, were complained againſt by the Commons for certain miſdemeanors, in removing the ſtaple of wool and other merchandize from Calais; in lending money to the King upon uſurious contracts; and in bargaining with the King's creditors, to take off the ſums due to them upon a ſmall advance; and for many other extortions, deceits, and oppreſſions, by the ſaid Richard Lyons, as farmer of the ſubſidies and cuſtoms.—To this accuſation Richard Lyons pleads, Not Guilty, with reſpect to ſome of the articles, and with regard to others, ſubmits himſelf to the King's mercy.—Upon which the ſaid Richard Lyons is committed to priſon, during the King's pleaſure, and adjudged to pay a fine,

fine, to be disfranchiſed in the city of London, never to hold any office under the King, nor to approach his council or court.—Rot. Parl. Vol. II. p. 323. N° 16. et ſubſ. *

2. See ſimilar proceedings againſt William Latimer, William Ellis, and others, in the ſame Parliament. (Rot. Parl. Vol. II. p. 324. et ſubſ.) The words of the record are, "William Sire de Latimer, "eſtoit empechez et accuſez per Clamour des ditz Communes de "diverſes deceits, &c."—to which the Lord Latimer, ſaving his right as one of the Peers of the Realm, puts in his particular anſwer to each article of the accuſation. And, after many reaſons urged before the Prelates and Lords, as well on the part of the King, as on the part of Lord Latimer, and ſeveral examinations had, after long deliberation, judgment was given in Parliament againſt him; and he is awarded by the Prelates and Lords in full Parliament, to be committed to priſon, and to pay a fine at the King's pleaſure. Upon which the Commons pray the King, that, being convicted of the crimes alleged againſt him, he may be ouſted of all his offices, and be never of the King's Council; which requeſt is granted †. He is afterwards bailed by ſeveral Biſhops, Lords, and others, "ſes "mainpernours durant le Parlement, et par celle mainpriſe le Ma-"reſchal d'Angleterre luy leſſaſt aller a large."

3. In the Parliament, 10th Richard II. 1386, the Commons with one accord came before the King, Prelates, and Lords, in the chamber of Parliament, and accuſed Michael de la Pole, Earl of Suffolk ‡, and late Chancellor of England, of ſeveral crimes; the principal

* The Rolls of Parliament referred to in this Work, are thoſe printed in ſix volumes, by direction of the Houſe of Lords.

† In the 51ſt of Edward III. the next Parliament, Bills were ſent up to the Lords from the Commons, for reverſing theſe and ſeveral other judgments, as having been given without due proceſs; but the Parliament being put an end to on that day, theſe Bills did not paſs.—Rot. Parl. Vol. II. p. 374. N° 87. et ſubſ.

‡ "Tous les Communes, d'un accord, et "unement aſſemblez viendrent devant le Roi, Prelatz

principal of which were, " That he had purchaſed lands of the King to a great value, for leſs than they were worth, in deceit of the King: And that, where monies had been granted by the Commons, to be expended, according to the manner deſired by the Commons, and agreed to by the King and Lords, and no otherwiſe, yet theſe monies had been miſapplied to other purpoſes."—To theſe accuſations the Earl of Suffolk put in his anſwer to all the ſeveral articles. The Commons reply, and the Earl rejoins to this replication. After which the ſaid Earl, at the requeſt of the Commons, was, on account of the greatneſs of the crimes alleged againſt him, arreſted by the King's command, and delivered into the cuſtody of the Conſtable of England, and then bailed. Judgment was then pronounced againſt him, upon ſeveral of the ſaid articles. And, for that he was convicted for non-ſufficiency of his anſwers to the crimes ſpecified, it was awarded, " That he ſhould be committed to the " King's Priſon, there to remain till he ſhould have paid a fine, " according to the King's pleaſure."—But with reſpect to thoſe articles, which related to his conduct as a Miniſter, and one of the King's Council, it ſeemed to the King and Lords of Parliament, that he ought not to be impeached for theſe by himſelf, without his companions, who were then of the King's Council. But if " any " ſpecial offence " was objected againſt him, he ſhould be ready to anſwer †.—Rot. Parl. Vol. III. p. 216. N° 6 to 17.

" Prelatz et Seigneurs, en. la Chambre de " Parlement, compleignant griefment de " Michel de la Pole, Count de Suff. darrein " Chancellor d'Engleterre, lors eſtant preſent, " et lui accuſerent *par demonſtrance de bouche.*". —See in the 1ſt vol. of State Trials, theſe proceedings againſt the Earl of Suffolk, in 1386; and further proceedings in 1388, againſt the ſaid Earl, Sir Robert Treſilian, Lord Chief Juſtice, and others concerned with him, for other offences.—The State Trials, referred to here, and in the ſubſequent parts of this Work, are the 2d edition in ſix volumes fol. publiſhed by Sollom Emlyn, Eſq; the four ſupplemental volumes publiſhed afterwards in 1735, and 1766; and the eleventh volume publiſhed by Mr. Hargrave.

† See a tranſlation of the articles at length, in the Parliamentary Hiſtory, Vol. I. p. 397. They are alſo, together with the Earl's anſwers, inſerted in Petyt's Jus Parl. ch. vii. p. 182. Walſingham relates, " That all the articles " were ſo fully proved, that the Earl of Suffolk " could not deny them; inſomuch that when " he ſtood upon his defence, he had nothing " to ſay for himſelf: whereupon, the King, " bluſhing for him, ſhook his head, and ſaid, " Alas! alas! Michael, ſee what thou haſt " done!"

4. On

4. On the 2d of March, 1388, 12th Richard II. Sir Robert Belknap, late Chief Juſtice of the Common Bench; Sir Roger Fulthorpe, Sir John Holt, and Sir William Burgh, late his companions, Judges of the ſame Bench; Sir John Cary, late Chief Baron of the Exchequer; and John Lockton, late King's Serjeant at Law, were brought into Parliament at the requeſt of the Commons, and there, by all the Commons aſſembled for all the Counties, Cities, and Boroughs of England, were accuſed and impeached of certain crimes, viz. for anſwering certain queſtions that had been put to them *, relating to matters of treaſon, and to which anſwers they had put their hands and ſeals †; which queſtions and anſwers were read to them. To theſe accuſations they ſeverally plead, ſtating the circumſtances under which theſe queſtions were put to them, and the anſwers given; and pray, That they may have a gracious and merciful judgment. To this the Commons replied, "That, being taken and holden for ſages of the "law, they ſhould have anſwered as the law was, and not otherwiſe, "as they did, with deſign, and under colour of law, to murther "and deſtroy ſeveral Lords and others." And therefore the Commons prayed, "That the ſaid late Judges, Barons of the Exchequer, "and King's Serjeant, might be adjudged convicts, and attainted of "treaſon, and as traitors to the King, and his kingdom." Upon which, the temporal Lords took time to adviſe, and examine the ſaid matter, and all the circumſtances: and then awarded, with the aſſent

* John Blake and Thomas Uſk were impeached by the Commons at the ſame time, "For that, being of the King's Council, they "had drawn up the queſtions, to which the "Judges had anſwered; and had been aiding "and adviſing in the Treaſons aforeſaid. "They were found guilty, and condemned as "Traitors and executed." (Rot. Parl. Vol. III. p. 240, 241, 244.) Afterwards, in this Parliament, all the Lords, as well ſpiritual as temporal, then preſent, "claimed, as their "liberty and franchiſe, that the groſs matters, "moved in this Parliament, and that ſhould "be moved in other Parliaments *in time to "come*, touching the Peers of the land, ſhould "be brought, adjudged, and diſcuſſed, *by the "courſe of Parliament; and not by the Civil "Law, nor by the Common Law of the land, "uſed in other the inferior Courts*; which claim, "liberty, and franchiſe, the King allowed and "granted in full Parliament."

† See, in the 2d Vol. of this Work, p. 292, the extracts relating to this proceeding, from Millar's Hiſtorical View of the Engliſh Government, and his obſervations thereupon.

of

of the King, "That they ſhould be drawn and hanged as traitors *, "their heirs diſinherited, and their lands, tenements, goods, and

* Sir William Blackſtone, in the 4th Book of his Commentaries, ch. xix. ſect. 1. lays it down, "That a *Commoner* cannot be impeach-"ed before the Lords for any *capital offence*, "but only for high miſdemeanors." And, to prove this poſition, he cites the caſe of Simon de Beresford, from Rot. Parl. 4th Edward III. N° 2, and 6.—This caſe is as follows: When "in 4th Edward III. the King demanded the "Earls, Barons, and Peers, to give judgment "againſt Simon de Beresford, who had been a "notorious accomplice in the treaſons of "Roger Earl of Mortimer, they came before "the King in Parliament, and ſaid all with "one voice, that the ſaid Simon was not their "Peer; and therefore they were not bound "to judge him as a Peer of the land. And "when afterwards, in the ſame Parliament, "they were prevailed upon, in reſpect of the "notoriety and heinouſneſs of his crimes, to "receive the charge and to give judgment "againſt him, the following proteſt and proviſo "was entered on the Parliament Roll. "And "it is aſſented and accorded by our Lord the "King, and all the great men, in full Parlia-"ment, that albeit the Peers, as Judges of "the Parliament, have taken upon them, in "the preſence of our Lord the King, to make "and render the ſaid judgment; yet the "Peers, who now are or ſhall be in time to "come, be not bound or charged to render "judgment upon others than Peers; nor that "the Peers of the land have power to do this, "but thereof ought ever to be diſcharged and "acquitted: and that the aforeſaid judgment "now rendered be not drawn to example or "conſequence in time to come, whereby the "ſaid Peers may be charged hereafter to "judge others than their Peers, contrary to "the laws of the land, if the like caſe happen, "which God forbid."—Rot. Parl. Vol. II. p. 53, 54. See this caſe, in the original language, with the opinion of the Judges thereupon, in the Appendix to this Vol. N° 10.—How far the concluſion drawn by Sir W. Blackſtone from this caſe, which was a proſecution at the ſuit of the King, has been admitted to be law, with regard to proſecutions, brought before the Lords, by impeachment at the ſuit of the Commons, will appear from the great number of inſtances, which occur in the following part of this volume, (ſubſequent in point of time to this of Simon de Beresford in the year 1330) where Commoners have been impeached before the Lords for capital offences, and in which the Lords have not made this objection. Lord Holles, in his work, concerning the Judicature of the Houſe of Peers, publiſhed in 1669, ſpeaking of the caſe of Simon de Beresford, gives it as his opinion, "That the proteſtation of the Lords, "not to ſit in judgment upon any but Peers, "was a mere *Order* of the Houſe of Lords, "alterable at pleaſure."—On the 2d July, 1689, a doubt aroſe in the Houſe of Lords, Whether this record of the 4th Edw. IIId was a ſtatute? And the queſtion being put to the Judges, they anſwer "As it appears to "them by the aforeſaid copy, they believe it "is a ſtatute; but, if they ſaw the Roll itſelf, "they could be more poſitive therein." It was then propoſed to aſk the Judges, Whether the Lords, by this ſtatute, be barred from trying a Commoner upon an impeachment of the Houſe of Commons? But the previous queſtion being put, it paſſed in the negative. See farther what is ſaid on this caſe of Simon de Beresford, under the next title, "Judgment by the Lords," N° 1.—In the 1ſt Vol. of the Lords printed Debates, page 264, 294, and 296, is a pamphlet written by Sir William Jones, and publiſhed in 1681, in which this queſtion is diſcuſſed, "Whether, by the law "and cuſtom of Parliament, the Lords ought "to try Commoners impeached by the Com-"mons in Parliament?"

"chattels,

" chattels, forfeited to the King *."—Rot. Parl. Vol. III. p. 238. et ſeq.

5. On the 12th of March, 1388, the Commons impeach Simon de Beverley, John Beauchamp, and ſeveral other perſons, of high treaſon, for having (together with the Archbiſhop of York, Sir Robert Treſilian, Blake, and Uſk, who had been in this preſent Parliament adjudged and attainted as traitors) impoſed upon the tender age of the King, and encroached upon the regal power; and that they had been counſelling, aiding, and abetting in thoſe treaſons, and † treaſonable practices, for which the Archbiſhop of York, and the others had been attainted. To this accuſation, they plead, Not Guilty. The Commons reply;—upon which, the temporal Lords took time ‡ to examine theſe accuſations and impeachments; and after due deliberation, determined, that the ſaid Simon de Beverley was guilty of the eighth article of impeachment, which had been adjudged treaſon in this Parliament, and judgment of treaſon was therefore pronounced againſt him §. And he was executed accord-

* See Parliamentary Hiſtory, Vol. I. p. 432, and Petyt's Jus Parl. ch. viii. page 182. This judgment of death, pronounced againſt theſe Judges, appears afterwards to have been changed (en meſme le Parlement ordine feuſt) into perpetual baniſhmeat, to Ireland; ſome to Cork, ſome to Dublin, others to Waterford.—Rot. Parl. Vol. III. p. 244. N° 6. See the King's writ, dated 13th July, 1388, to the Sheriffs for tranſporting Holt, Belknap, and the others, to Ireland, and for their ſeveral accommodation there, " cum quadra-" ginta marcis pro expenſis ſuis, pro primo " anno, uno lecto, veſturâ pro corpore ſuo, ac " duobus familiaribus."—Rymer's Fœd. Vol. VII. p. 591.

† The accuſation againſt Simon de Beverley, and the reſt now impeached, conſiſted of ſixteen articles, which ſee in the Rot. Parl. Vol. III. p. 241. et ſubſ.

‡ This impeachment was brought up to the Lords on the 12th of March; they took time, firſt till the 20th of March, and afterwards till the 5th of May; during which time, the King, with the aſſent of the Lords, *adjourned the ſaid Parliament* till the next Monday after the 15th day after Eaſter, " d'eſtre en meſme le lieu, et en meſme l'eſtat, " come y feuſt a temps de meſme l'ajourne-" ment."—Rot. Parl. Vol. III. p. 243.

§ In conſideration that Simon de Beverley had been in the ſervice of the King, and was a Knight of the Garter, the King, with the aſſent of the Lords, remitted the " training and hanging," and commanded, That he ſhould be " beheaded " near the Tower of London.—Rot. Parl. Vol. III. p. 243.

ingly. The other impeached perſons were alſo declared guilty of high treaſon upon different articles, and were executed *.

6. On the 20th of September, 1397, in the 21ſt year of Richard II. the Commons accuſed and impeached in full Parliament, Thomas Arundel, Archbiſhop of Canterbury, of High Treaſon, for having, whilſt he was Chancellor, traiterouſly aided, procured, and adviſed the making out a commiſſion, directed to the Duke of Glouceſter, and others, of which himſelf was one; which commiſſion was made in prejudice to the King, and againſt his royalty, crown, and dignity; and that he afterwards put the ſaid commiſſion into effect. They aſſigned another crime, That he procured the Duke of Glouceſter, and the Earls of Arundel and Warwick, to take upon them regal power. Upon which, the Commons prayed, That the ſaid Archbiſhop might be put in ſafeguard. To which the King anſwered, That, becauſe the ſaid accuſation touched ſo high a perſon, and "a Peer of his Realm †," he would be adviſed. But on the 25th of September, the Commons again prayed, That, as they had impeached and accuſed the ſaid Archbiſhop of the ſaid crimes, it would pleaſe the King to order ſuch judgment againſt the ſaid Archbiſhop as the caſe required. Upon which, the King recorded in Parliament, that the ſaid Archbiſhop had come before him, in the preſence of ſeveral Lords, and had confeſſed, that in the uſe of the ſaid commiſſion he had been miſtaken; and ſubmitted himſelf to the King's mercy. On which the King, and all the Temporal Lords, and Thomas de Percy ‡ (having ſufficient power from the Prelates and Clergy of the Realm) adjudged and declared the crime committed

* See further upon this ſubject under the next title, "Judgment by the Lords," N° 3.

† He ought rather to have ſaid, "a Lord of his Parliament."

‡ See in Coke's 4th Inſt. ch. 1. p. 4, a deſcription of this Officer, under title, *Procuratores Cleri*.—The copy of the Inſtrument, from the Archbiſhops of Canterbury and York, and the Prelates and Clergy of both Provinces, granting power to Thomas de Percy, Knight, to conſent, in their name, to all matters and ordinances in Parliament, is inſerted

committed by the Archbiſhop to be treaſon againſt the King, and the ſaid Archbiſhop to be a Traitor. And it was thereupon awarded in full Parliament, That the ſaid Archbiſhop ſhould be

inſerted in the Rolls of Parliament, 21 Richard II. N° 9 and 10, and is as follows:— "Item, meſme le Mardi les Communes monſtrerent au Roi, coment devant ces heures pluſieurs juggements, ordenences, faites en temps des progenitours n̄re S̄r le Roy en Parlement, ount eſte repellez et annullez, pur ceo q̄ l'eſtat de Clergie ne feuſt preſent en Parlement, a la faiſance des ditz juggements et ordenences: Et pur ceo prierent au Roi, q̄ pur ſeurte a ſa perſone, & ſalvation de ſon Royaume, les Prelatz et le Clergie ferroient un Procurateur, ovec poair ſufficeant pur conſenter en leur noun as toutz choſes et ordenences a juſtifiers en ceſt preſent Parlement: et q̄ ſur ceo cheſcun Seign̄r Eſpirituel dirroit pleinement ſon advis. Sur quoi les ditz Seign̄rs Eſpirituelz ſeveralement examinez ſe conſenterent de committer le plein poair generalement a une lay perſone, & nomerent en eſpecial Monſ̄r Thomas Percy, Chivaler. Et ſur ceo baillerent a̅u Roy une cedule contenent leur dit poair; laquele n̄re S̄r le Roy receuſt, et comanda la diſte Mardi eſtre entrez de record en Rolle de Parlement. De quele cedule la forme s'enſuit: "Nos, Thomas Cantuar' et Robertus Ebor' Archiepiſcopi, ac Prelati et Cleres utriuſque provencie Cantuar' et Ebor', jure Eccleſiarum noſtrar' et Temporalium earumdem *habentes jus' interreſſendi in ſingulis Parliamentis Dn̄i n̄ri Regis* et Regni Angliæ pro tempore celebrand', necnon tractand' et expediend' in eiſdem quantum ad ſingula in inſtanti Parliamento pro ſtatu et honore Dn̄i n̄ri Regis, necnon regalie ſue, ac quiete, pace, et tranquillitate Regni judicialiter juſtificand' venerabili viro Dn̄o Thome de Percy, Militi, n̄tram plenarie committimus poteſtatem; ita ut ſingula per ipſum facta in p̄miſſis perpetuis temporibus (rata) habeantur."—Rol. Parl. Vol. III. p. 348. Biſhop Burnet, in his Hiſtory of the Reformation, Part II. p. 49, ſays, "Upon the whole matter, it is not certain, what was the power or right of theſe Proctors of the Clergy in former times; but it ſeems ſtrange, that in this Parliament of the 21ſt Richard II. this ſhould be the only time, that the Clergy are mentioned, as having a ſhare in the legiſlative power." Biſhop Atterbury denies this poſition; and in proof of his contradiction refers to the Record in the 8th year of Henry IV. by which the Crown was ſettled on the heirs of the King, "de conſenſu et aviſamento omnium Prælatorum Magnatum et Procerum, *ac Cleri*, et Communitatis Regni Noſtri;" for, ſays Biſhop Atterbury, "it would be ridiculous to imagine that by *Clergy*, in this inſtrument, thus placed between the Lords and Lay-Commons, any other than the *Convocation Clergy* are intended."

*Atterbury's Rights, Powers, and Privileges of the Convocation, p.* 62, 63. *and* 370.

On referring to the Record, cited by Biſhop Atterbury, of the 7th and 8th Henry IV. which is printed in the Rol. Parl. Vol. III. p. 580. N° 60, intituled, "L'enheritance de la Couronne," it does not appear, that any other of the Clergy were parties to that Inſtrument, than the Biſhops and Mitred Abbots that had ſeats in Parliament. The names of all the Lords, Spiritual and Temporal, who ſigned the deed, and of Sir John Tybetot, Speaker for the Commons, are there entered. It ſeems therefore as if theſe *Procuratores Cleri* were *Lay-Perſons* appointed by the Biſhops and Abbots having ſeats in Parliament, with authority to act, for them and in their name, on queſtions, where, as in matters of blood, they were reſtrained by the Eccleſiaſtical Canons, and by the Conſtitutions of Clarendon, from being perſonally preſent. The Canon, by which this reſtriction was ordained, "That

be baniſhed out of the Realm of England, during the King's pleaſure, his temporalities ſeiſed, and his goods and chattels forfeited to the King.—Rot. Parl. Vol. III. p. 351. N° 15 and 16.

7. On the 28th of January, 1397, in the 21ſt year of Richard II. the Commons, in the Parliament held at Shrewſbury, accuſed and impeached Sir John Cobham of certain Crimes and Miſdemeanors committed by him in prejudice to the King, and againſt his Royalty, Crown, and Dignity. To this impeachment Sir John Cobham pleaded, Not Guilty; and ſhewed, that the crime for which he was accuſed, viz. the iſſuing a Commiſſion, by virtue of which ſeveral perſons had been tried and executed, was done, as he underſtood, by the King's command. To which it was anſwered, on the part of the King, That he was at that time in ſuch hands, and under ſuch reſtraint, that he could not ſay otherwiſe—and that Sir John Cobham knew that this Commiſſion was againſt his will.—To this Sir John Cobham made no reply. Whereupon the Commons demanded judgment againſt the ſaid Sir John Cobham, as convicted and attainted of uſing and executing the ſaid Commiſſion, and of the judgment and award, which he had thereupon given againſt certain perſons. Whereupon the Duke of Lancaſter, by command of the King, and all the Temporal Lords, and of the Earl of Wiltſhire * (having ſufficient authority from the Prelates and Clergy of the Realm) awarded, That the ſaid Sir John Cobham be attainted and convicted as aforeſaid, and adjudged him a Traitor to the King and Kingdom, and that he ſhould be drawn, hanged, beheaded, and quartered; and that all his manors, lands, tenements, &c. ſhould be forfeited to the King. This judgment, as far as it concerned his life, the King was pleaſed to remit, and to pardon; but that he

" That no Biſhop, Abbot, or Clergyman " ſhould judge any perſon to the loſs of life or " limb, or give his vote or countenance to " any others for that purpoſe," was paſſed in a National Council held at London, in the 9th of William the Iſt, in the year 1075.
*Carte's Hiſtory of England, Vol.* I. *p.* 430.

* See the preceding note.

ſhould remain a perpetual priſoner in the Iſle of Jerſey for his life; on condition, that, if he made his eſcape from thence, the judgment of Death ſhould then be executed upon him. And it is awarded by all the Eſtates in Parliament, That the lands and tenements of which Sir John Cobham ſhould ſtand infeoffed to the uſe of other perſons, ſhould not on account of this judgment be forfeited.—Rot. Parl. Vol. III. p. 381, N° 10 *.

8. On the 7th of February, 1450, in the 28th year of Henry VI. the Commons, by William Treſham, their Speaker, accuſe and impeach William de la Pole, Duke of Suffolk †, of certain

* See alſo Parliamentary Hiſtory, Vol. I. p. 484.

† Prior to this proceeding, viz. on the 22d of January, the Duke of Suffolk, having, in the preſence of the Lords, deſired, on account of the infamy and defamation that is ſaid againſt him by many of the people of the land, That if any perſon would ſay it ſpecially, he might make his anſwer; and that his Proteſtation might be inrolled in the Rolls of Parliament; this was accordingly done. The Commons, on the 26th of January, ſent a meſſage to the Chancellor, deſiring that he would let the King have knowledge of what the Duke of Suffolk had alleged; and that it would like the King to commit him to ward, after the courſe of the law.—This being communicated by the Chancellor to the King and Lords in the Council Chamber, the Lords were aſked, What ſhould be done upon this requeſt of the Commons, and whether the ſaid Duke ſhould be put to ward or not?—And it was aſked of the Judges, What the law would in this matter, that the King and the Lords might have knowledge of the law? To which the Chief Juſtice of the King's Bench declared for all his fellows, and ſaid, "That in "theſe general terms, 'Rumour, and noiſe of "Scandal and Infamy,' many things might "be underſtood, i. e. Miſpriſion or Treſpaſſes "—for which cauſes it needeth not to commit "him to ward;—or elſe Felonies or Treaſons.—And foraſmuch as the words were "general, and nothing in eſpecial declared, "he would commune with his fellows, and "bring an anſwer, what the law therein wills "after her conceytes."—And afterwards, all the Lords, from the loweſt to the higheſt, held in manner one opinion: 'That, for cauſe there was no "ſpecial matter" of Slander and Infamy put upon him, he ſhould not be committed to ward till the ſpecialty was declared and ſhewed.'—But on the 28th of January, the Commons coming again, and declaring certain ſpecific crimes againſt the ſaid Duke; and the Speaker, in the name of all his Fellows, praying the Chancellor and Lords to open the ſame to the King, and that it would like him to commit the ſaid Duke to the Tower, during the ſaid Court of Parliament, until he may declare himſelf of the ſaid matter, and of other things, that ſhall be put upon him; "as it is thought by all their wiſdoms, "that they have declared ſpecial matter "enough of ſuſpicion of Treaſon againſt the "ſaid Duke for to commit him to ward" —upon this, the ſaid Duke was committed to the Tower to ward. Rot. Parl. Vol. V. p. 176, N° 14 to 17.

High Treaſons, and alſo of offences and miſpriſions, committed by him againſt the King's Majeſty, as in a Bill, containing certain articles, is more fully ſet forth; which Bill the Commons by their Speaker delivered to the Chancellor and Lords; and the Commons deſired that the ſaid Duke might be proceeded againſt, upon the ſaid articles, in Parliament, according to the laws and cuſtom of England. —The articles are then ſet forth, ſtating ſeveral acts of High Treaſon. After which, on the 9th of March, the Commons deliver in further articles, accuſing the ſaid Duke of malverſation in office, and ſeveral High Crimes and Miſdemeanors *. On the ſame day, the 9th of March, the Duke was brought from the Tower, into the preſence of the King, and the Lords Spiritual and Temporal, in the Parliament Chamber; and the accuſations and impeachments made againſt him by all the Commons in Parliament were declared to him.—He deſired copies of the ſeveral articles, which were allowed him; and, that he might be nearer, and more ready to come to his anſwer, the King, by the advice of the Lords, committed him to the ward of certain perſons, to be by them kept in a tower in the Palace of Weſtminſter. On the 13th of March, he is again brought

* It may be curious to ſee what the miſdemeanors were, for which this powerful Miniſter was accuſed by the Commons, almoſt 350 years ago. There were eighteen articles. 1. Malverſation in his office as Lord Steward of the Houſehold. 2. Adviſing the King to grant liberties and privileges to certain perſons, to the hindrance of the due execution of the laws. 3. Adviſing the grant of a peerage, and great lordſhips and poſſeſſions, to the huſband of his niece. 4. The granting away other great offices and poſſeſſions in the province of Guienne. 5. Diſcovering the King's ſecret councils to the French King. 6. Procuring offices for perſons who were unfit, and unworthy of them. 7. Procuring of grants of tributes and impoſitions to ſeveral perſons. 8. And of Earldoms and Lordſhips. 9. Making a convention of peace without the knowledge or aſſent of the other Lords of the Council. 10. Miſapplying the ſubſidies to other purpoſes, than thoſe to which the Commons had granted them. 11. Giving large ſums of money to the French Queen. 12. Squandering away the public treaſure. 13. Obtaining the inheritance of the earldom of Pembroke, and great wards and marriages. 14. Embezzling ſeveral obligations for ſums due to the King from the Duke of Orleans. 15. Delaying of juſtice, in ſtopping the execution of writs of appeal of ſeveral women, for the deaths of their huſbands. 16. Procuring a pardon for a perſon appealed for murther. 17. Making of ſheriffs for money, and that might be favourable to his purpoſes in their ſeveral counties. 18. Aſſiſting the Dauphin of France with ſoldiers, againſt the King's allies in Germany.—Rot. Parl. Vol. V. p. 179.

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in; and with reſpect to the Treaſons charged againſt him, he denied them utterly; and with regard to ſome of the other articles, he delivers in ſpecial anſwers. Upon the 17th of March, the King ſent for all the Lords, both Spiritual and Temporal, then in town, into his Palace of Weſtminſter, and alſo for the Duke of Suffolk; who kneeling, the Chancellor, by the King's command, putting him in mind of his anſwers and declarations to the accuſations and impeachments of the Commons, and, as at that time he did not put himſelf upon his Peerage, the Chancellor aſked, What he would now ſay further upon that ſubject? the Duke anſwering, That, with reſpect to the ſaid articles, he thought he had anſwered them ſufficiently, having denied the days, the years, the places, the communications had, and ſaying utterly they were falſe and untrue; he therefore ſubmitted himſelf wholly to the King's rule and governance, to do as to him ſhould ſeem proper.—Whereupon, the Chancellor, by the King's command, replied, That as to the firſt accuſations of Treaſon, in the firſt Bill compriſed, the King held him neither declared nor charged.—And as to the Miſpriſions, contained in the ſecond Bill, the King, by force of his ſubmiſſion, by his own advice, and not reporting him to the advice of his Lords, nor by way of judgment—for he is not in the way of judgment—declares, that he ſhall, before the 1ſt of May next, abſent himſelf out of the realm; and ſhall ſo continue for five years from the ſaid 1ſt day of May*.

Whereupon the Lord Beaumont, on the behalf of the Lords Spiritual and Temporal, and by their advice, aſſent, and deſire, re-

* "The Duke of Suffolk went, full of hopes "of being recalled as ſoon as the fury of the "nation, or the heats of Parliament, were "over: but being taken at ſea, the day after "he ſailed from Ipſwich towards Flanders, by "a ſhip of war, called *The St. Nicholas of the "Tower*, the Captain of it put into Dover "Road, cut off his head on the 2d of May, "and threw it with his body on the ſands; "whence they were conveyed to the Colle-"giate Church of Wingfield, in Suffolk, and "there buried."—Carte's Hiſtory of England, Vol. II. p. 738.

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cited and declared, That this judgment proceeded not by their advice and counſel, but was done by the King's own demeanance and rule. —And therefore beſought the King, that this their ſaying might be enacted in the Parliament Roll, with this Proteſtation, "That it "ſhould not be, nor turn in prejudice nor derogation of them, their "heirs and ſucceſſors, but that they may have and enjoy their li- "berties and freedom, in caſe of the Peerage hereafter, as ever they, "or any of their anceſtors, had and enjoyed before that time."— Rot. Parl. Vol. V. p. 177, N° 18 to 51 *.

## OBSERVATIONS.

### *Upon* Impeachment by the Commons.

It was not till towards the end of the Reign of Edward III. that the Houſe of Commons took upon themſelves the character of accuſers, before the Lords, of perſons charged with Treaſon, or other High Crimes and Miſdemeanors againſt the State.—Though there are ſeveral inſtances upon the Rolls of Parliament, previous to the caſe of Richard Lyons in 1376, of judgments pronounced by the Lords †, as well againſt Peers as Commoners, for great public offences, yet theſe proceedings appear to have been inſtituted, either

* See alſo Parliamentary Hiſtory, Vol. II. p. 255.

† See, under title, "Judgment by the Lords," N° 1, the caſe of Earl Mortimer, and Simon de Beresford; and under title "Bills of Pains and Penalties," N° 2.—I think Reeves, in his Hiſtory of Engliſh Law, Vol. II. p. 85, is miſtaken in ſuppoſing the accuſation againſt Sir John Lee to have been by the Commons; as it appears from the Rot. Parl. Vol. II. p. 297, to have been at the ſuit and by petition of William Latimer to the King and Council. —See this caſe of Sir John Lee in this Vol. 1ſt Part, under title "Bills of Pains and Penalties," N° 2.

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from the Crown itſelf, or at the prayer of private perſons, who found themſelves aggrieved by the Officers of the Crown in high truſt and power, and againſt whom they had no other redreſs than by application to Parliament.—From the time that the Commons became parties in theſe proſecutions, the inſtances were frequent, in which they found themſelves obliged by their duty to carry up complaints to the Lords, againſt perſons of the higheſt rank and favour with the Crown; or againſt thoſe in judicial or executive offices, whoſe elevated ſituation placed them above the reach of complaint from private individuals, who, if they failed in obtaining redreſs, might afterwards become the objects of reſentment of thoſe, whoſe tyrannical oppreſſions they had preſumed to call in queſtion. This circumſtance, therefore, of the Commons aſſuming this invidious office, and, as the repreſentatives of the people at large, ſtanding forwards as the proſecutors of the higheſt and moſt powerful offenders againſt the State, forms a remarkable æra in the hiſtory of the criminal juriſprudence of this country: it has certainly very much contributed, in this kingdom, to controul and repreſs thoſe acts of injuſtice and oppreſſion, which, in more deſpotic governments, Miniſters, protected by their great rank, and overbearing power, are but too apt to exerciſe againſt perſons who preſume to offend them; and has been the means of bringing to condign puniſhment thoſe " great Apoſtates to the Commonwealth," who, by their actions or counſels, have endeavoured to ſubvert the fundamental laws of their country, and to introduce an arbitrary and tyrannical government.

The crimes for which, during this period from 1376 to 1450, the Commons impeach, are, Miſdemeanors, committed by perſons employed by the Crown, either at home or in its foreign poſſeſſions—Mal-adminiſtration of juſtice, and extra-judicial conduct, in the Judges of the realm—Treaſon, or treaſonable practices, not ſpecifically mentioned in the Statute of 25th Edward III. but

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by a clauſe in that Act expreſsly reſerved for the determination of Parliament *.

The forms of proceeding, even in theſe early inſtances, particularly in the caſe of the Duke of Suffolk, in 1450, were much leſs different from the preſent, than what at periods ſo diſtant might be expected.—The articles of charge are carried up by the Commons, and delivered by the Speaker to the Chancellor and Lords; further articles are afterwards exhibited. When theſe charges are read to the Duke, who was brought in cuſtody from the Tower for that purpoſe, copies of them are, at his requeſt, allowed to him—he then pleads, Not Guilty, by denying the truth of the matters alleged againſt him †.

And, with reſpect to the rules by which the Lords then conſidered themſelves as bound to try and determine queſtions of Impeachment brought before them by the Commons—they reſolve, in the caſe of Belknap and the other Judges, "That theſe matters, "when brought before them, ſhall be diſcuſſed and adjudged by "the courſe of Parliament, and not by the civil law, nor by the "common law of the land uſed in other inferior courts."

It ſeems remarkable, that no inſtances of Impeachment occur, during the reigns of Edward IV. Henry VII. Henry VIII. Ed-

* The Statute, 25th Edward III. ſtat. 5th. ch. 2. intituled, "A Declaration which Of-"fences ſhall be adjudged Treaſon," after reciting the ſeveral offences which conſtitute Treaſon, goes on; "And becauſe that many "other like caſes of Treaſon may happen in "time to come, which a man cannot think "or declare at this preſent time—it is ac-"corded, That if any other caſe, ſuppoſed "Treaſon, which is not above ſpecified, doth "happen before any Juſtices, the Juſtices "ſhall tarry, without any going to judgment "of the Treaſon, till the cauſe be ſhewed be-"fore the King and his Parliament, whether "it ought to be judged Treaſon or other Fe-"lony."—See Coke's 3d Inſt. ch. 2. p. 22. —See alſo further upon this proviſo, in the ſubſequent caſe of Lord Strafford.

† The courſe of this proceeding was here interrupted by the interference of the King, who baniſhed the Duke of Suffolk for five years, not however without a Proteſt from the Lords, "ſaving their Rights and Liber-"ties, and Privilege of Peerage."

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ward VI. Queen Mary, and Queen Elizabeth, nor till the 17th year of James I. Nor can this be accounted for in any other manner, than that, during this period, Bills of Attainder, and Proſecutions in the Court of Star Chamber, were ſubſtituted in their ſtead. —The new modelling of the Star Chamber * by Henry VII. in the 3d year of his reign, and the ſupplementary Statute of the 21ſt Henry VIII. ch. 20, transferred to this Court the trial of all thoſe

* See Lord Bacon's account of this in his Hiſtory of Henry VII.—"This Court," he ſays, "is one of the ſageſt, and nobleſt "inſtitutions of this kingdom;—for in the "diſtribution of courts of ordinary juſtice, "(beſides the High Court of Parliament) in "which diſtribution the King's Bench hold-"eth the Pleas of the Crown; the Common "Pleas, Pleas Civil; the Exchequer, Pleas "concerning the King's Revenue; and the "Chancery, the Pretorian Power for miti-"gating the Rigour of Law, in caſe of ex-"tremity, by the conſcience of a good man; "there was nevertheleſs always reſerved a "high and pre-eminent power to the King's "Council, in cauſes that might, in example "or conſequence, concern the ſtate of the "Commonwealth; which, if they were cri-"minal, the Council uſed to ſit in the cham-"ber, called The Star Chamber; if civil, "in the White Chamber, or White Hall.— "And, as the Chancery had the Pretorian "power for equity, ſo the Star Chamber had "the Cenſorian power for offences under the "degree of capital.—The authority of this "Chamber, which before ſubſiſted by the "ancient common laws of the realm, was "now confirmed in certain caſes by Act of "Parliament."—Bacon's Works, Vol. II. p. 290.——Lord Clarendon, in ſpeaking of the abolition of this Court in 1641, ſays, "Thus "fell this High Court, a great branch of the "Prerogative; having rather been extended "and confirmed, than founded, by the Sta-"tute of the 3d year of King Henry VII. "For, no doubt, it had both a being and a "juriſdiction before that time, though vul-"garly it received date from thence; and, "whilſt it was gravely and moderately go-"verned, was an excellent expedient to pre-"ſerve the dignity of the King, the honour "of his Council, and the peace and ſecurity of "the kingdom.—But the taking it away was "an act very popular; which, it may be, was "not then more politick, than the reviving it "may be thought hereafter, when the preſent "diſtempers ſhall be expired." Hiſtory of the Reb. Vol. I. p. 223. Book 3d.—Another great Stateſman, Lord Somers, deſcribes this Court of Star Chamber, as follows: "We "had a Privy Council in England, with "great and mixed powers; we ſuffered under "it long and much: All the Rolls of Parlia-"ment are full of complaints and remedies; "but none of them effectual till Charles the "Firſt's time. The Star Chamber was but "a ſpawn of our Council: and was called ſo, "only becauſe it ſat in the uſual Council "Chamber. It was ſet up as a formal Court "in the 3d year of Henry VIIth, in very ſoft "words, "To puniſh great riots—to reſtrain "offenders too big for ordinary juſtice—or, "in the modern phraſe, to preſerve the pub-"lic peace." But in a little time it made "this nation tremble. The Privy Council "came at laſt to make laws by proclama-"tion; and the Star Chamber ruined thoſe "that would not obey. At laſt, they fell "together, but not without endangering the "nation."

*Lord Hardwicke's State Papers, Vol.* II. *p.* 473.

Miſdemeanors, which would otherwiſe have become the object of Parliamentary proſecution by Impeachment; and, as is well expreſſed by a learned writer * on this ſubject, "This Court became "the happieſt inſtrument of arbitrary power, that ever fell under "the management of an abſolute ſovereign.—The Star Chamber "exerciſed a criminal juriſdiction almoſt without limitation, and al- "together without appeal; taking upon it to judge and animadvert "upon every thing, in which Government felt itſelf intereſted. "—It became in truth as much a Court of State, if the expreſſion "may be allowed, as a Court of Law."—By this extenſion of its juriſdiction, and the ſeverity of its penalties, it for a time ſuperſeded the exerciſe of the more legal proceeding in Parliament againſt ſimilar offences, by Impeachment for High Crimes and Miſdemeanors. —The more atrocious offences of Treaſon, and treaſonable practices againſt the State, were, during this period, proſecuted and puniſhed by Bills of Attainder; which, though very rare till the reign of Edward IV. became, during that reign and thoſe of his ſucceſſors †, the common mode of proceeding againſt perſons accuſed of ſuch crimes.

* Reeves's Hiſtory of Engliſh Law, Vol. II. Part 2d, ch. 15.

† The reign of Queen Elizabeth ſhould be excepted out of this remark.

## II. *Judgment by the Lords.*

1. THE Judgment, which paſſed in the year 1330 againſt Earl Mortimer, was upon articles of accuſation, charged at the ſuit of the King; and, as appears from Rot. Parl. Vol. II. p. 53, N° 1, was given by the Earls, Barons, and Peers of the Realm, "as Judges of the Parliament."—But, when, in the ſame Parliament, Simon de Beresford is charged by the King in aiding and adviſing with the ſaid Earl Mortimer in the ſaid Treaſons and Felonies, the ſaid Earls, Barons, and Peers, came before the King in Parliament, and ſaid, "That the ſaid Simon was not their Peer, "and therefore they were not bound to judge him, as a Peer of the "land *."

2. In the 1ſt year of Richard II. on the 22d of December, 1377, Alice Perrers, who had been miſtreſs to the old King, Edward

* This accuſation againſt Simon de Beresford was at the King's ſuit. Rot. Parl. Vol. III. p. 53, N° 4.—Notwithſtanding the declaration of the Lords, they afterwards condemn the ſaid Simon de Beresford and others, not Peers, to be executed for the ſaid Treaſons and Felonies—But immediately declare, "That, "though they had for this time proceeded "to give judgment upon thoſe that were no "Peers, hereafter theſe judgments ſhould not "be drawn into example or conſequence, ſo "that they ſhould be called upon to judge "others than their Peers, contrary to the law "of the land." Rot. Parl. Vol. II. p. 54, N° 6.—In the 29th ch. of Magna Charta, 9th Henry III. it is ſaid, "Nec ſuper eum "ibimus, nec mittemus, niſi per legale judi-"cium parium ſuorum, vel per legem terræ." That is, ſays Sir Edward Coke, 2d Inſt. p. 46. "No man ſhall be condemned *at the King's* "*ſuit*, either before the King in his Bench, "where the Pleas are, *Coram Rege*, (and ſo "are the words, *nec ſuper eum ibimus*, to be "underſtood) nor before any other Commiſ-"ſioner or Judge whatever, (and ſo are the "words, *nec ſuper eum mittemus*, to be under-"ſtood)." And again, 2d Inſt. p. 48, in commenting upon the words, "Per judicium "parium ſuorum," Sir Edward Coke ſays, "Note, as is before ſaid, That this is to be "underſtood, *of the King's ſuit*; for if an *ap-*"*peal* be brought againſt a Lord of Parlia-"ment, which is the ſuit of the party, there "he ſhall be tried, not by his Peers, but by "an ordinary Jury: For that this ſtatute ex-"tendeth *only to the King's ſuit*."—So in the Lord Dacre's caſe, in the 26th of Henry VIII. on a queſtion, Whether he might waive his trial by

ward III. was charged before the Lords*, of having incurred the penalties of forfeiture and baniſhment, inflicted by an ordinance made in Parliament in the 50th year of the late King, againſt ſuch women, and particularly againſt her the ſaid Alice Perrers, as ſhould, by way of maintenance, purſue matters and ſuits in the King's Courts †.—Witneſſes to theſe facts were examined before the Lords, and Alice Perrers was heard in her defence; and being found guilty, and the Lords preſent averring, that it was meant, That the ordinance in queſtion ſhould have the force of a ſtatute—it is awarded in Parliament, that the ſaid ordinance ſhould have the ſaid force and effect; and that thereby the ſaid Alice ſhould be baniſhed out of the kingdom, and her lands, chattels, tenements, and poſſeſſions ſeized and forfeited to the King.—But that it is not the intention of the King or Lords, that the ordinance or award, made in this ſpecial caſe, ſhould in any other caſe be drawn into example.—Rot. Parl. Vol. III. p. 12. N° 41.

by his Peers, and be tried by the Country, the Judges all agreed, that he could not, "For "the Statute of Magna Charta is in the ne- "gative, Nec ſuper eum ibimus, niſi per legale "judicium parium ſuorum, that is, *at the "King's ſuit upon an indictment.*" Kelyng's Rep. p. 56. And, in the Tract cited before in the note, p. 54, Sir William Jones ſays, "It is "evident from the Roll itſelf, in the caſe of "Simon de Beresford, and the other Records, "that the Lords did judge thoſe Commoners "contrary to the law of the land, that is, *at "the inſtance of the King*; ſo that judgment "was given *at the King's ſuit*, in a way not "warranted by the law and cuſtom of Parlia- "ment, or any other law of the kingdom: "but there is not a word in that Record, "which imports a reſtriction of that lawful "juriſdiction, which our Conſtitution placeth "in the Lords to try Commoners, when "their caſes ſhould come before them *law- "fully*, that is, *at the ſuit of the Commons* by "Impeachment."

*Lords Debates, printed in* 1742, *Vol.* I. *p.* 297.

* This accuſation was brought forward before the Peers by Sir Richard Scroop, Steward of the King's Houſehold, and, as Prynn obſerves, in Cotton's Abridgment, p. 158, "The record is ſtrange, and worthy of "ſight."—See alſo in Rot. Parl. Vol. III. p. 10, N° 38, et ſubſ. as ſtrange a proceeding, where the Lords pronounce judgment of death againſt Le Sire de Gomenis and William Weſton, for having ſurrenderd the Fortreſſes of Arde and Outrewyck to the enemy, of which they had the cuſtody.—And in the ſame Vol. of the Rot. Parl. p. 152, N° 15 to 25—the proceedings againſt the Biſhop of Norwich, for breach of truſt, and ſelling the Caſtle of Gravelines to the French.

† See this ordinance in Rot. Parl. Vol. II. p. 329. N° 45.

3. In

3. In 1388, there are ſeveral proceedings before the Lords againſt the Archbiſhop of York, and other great officers, and againſt ſeveral of the Judges * for having given extra-judicial opinions, and miſinterpreting the law †.—Upon which, after a very long and accurate examination, judgments of Treaſon are given againſt them, as Traitors to the King and Kingdom ‡.—Rot. Parl. Vol. III. p. 229. et ſubſ.

4. The

* See before, p. 53, of this Vol. N° 4; and Parliamentary Hiſtory, Vol. I. p. 414.

† In the courſe of this proceeding, the Judges, Serjeants, and other ſages of the law of the realm, and of the civil law, were charged by the King, to give their faithful advice to the Lords of Parliament, how they ought to proceed in this matter.—Which Judges, Serjeants, and ſages of the law of the Realm, and alſo the ſages of the civil law, deliberated, and anſwered to the Lords in Parliament, "That, having ſeen and well underſtood the "tenor of the ſaid appeal, they declared, it "was neither brought nor affirmed according "to the order, which either the one law or the "other required."—To this the Lords, having taken deliberation and advice, anſwer, "That, in ſo high a crime as is laid in the "ſaid appeal, touching the perſon of the "King and the eſtate of the Realm, perpe-"trated by perſons who are Peers of the "Realm, with others, *the cauſe cannot be tried "elſewhere than in Parliament, nor by any other "law, than the law and courſe of Parliament.*— "And that it belongs to the Lords of Parlia-"ment, by ancient cuſtom of Parliament, to "be Judges in ſuch caſes.—For that the "Realm of England is not, nor ever was (nor "is it the intent of the King or Lords of Par-"liament that it ever ſhall be) ruled or go-"verned by the civil law.—And therefore "their intention is, not to rule or govern ſo "high a cauſe as this appeal is, (and which "cannot be tried or terminated but in Parlia-"ment) by the courſe, proceſs, or order uſed "in any inferior court or place; which courts "or places are only the executors of the ancient "laws and cuſtoms of the Realm, and of the "ordinances and eſtabliſhments of Parlia-"ment."—Rot. Parl. Vol. III. p. 236.—Lord Chancellor Nottingham, ſpeaking of the difference between "Appeals and Impeach-"ments," ſays, "An appeal of murther, "becauſe the King cannot pardon it, is an "odious ſuit in law, and is tied to more ſtrict-"neſs and formality than any other ſuit what-"ever,—on the contrary, an impeachment in "Parliament muſt not be called an odious "proceeding, *nor is tied to any of the terms of "the Civil or Common Law*; as was ſaid by "the Lords appellants in the reign of Richard "II."

*Treatiſe on the King's power of granting pardons in caſes of Impeachment, by Heneage Earl of Nottingham, Lord High Chancellor, p. 19. Printed for T. Payne, 1791.*

‡ Petyt, obſerving upon the puniſhments inflicted on theſe Judges for extra-judicially miſinterpreting the law, ſays, "Thus we ſee, "that the execution of Treſylian, Blake, and "Uſk, and the reſt, together with the per-"petual baniſhment of the other Legicides, "did, for ſeveral following generations, ſerve "as an excellent Almanack for the meridian "of Weſtminſter Hall, and a *Circumſpecte "Agatis* to many ſucceeding Judges, until "about the end of Queen Elizabeth's reign." Jus Parl. Ch. viii. p. 211. In a pamphlet, publiſhed in 1791, intituled, "A Review of "the Arguments in favour of the Continuance

"of

4. The proceedings in the foregoing inſtance, and the judgment of Treaſon pronounced by the Lords, againſt the perſons accuſed of the crimes there alleged, induced the Commons, at the cloſe of that Seſſion of Parliament, to petition the King, "That, whereas "divers points had been declared for Treaſon in this preſent Par- "liament, which were not declared by ſtatute before, no Juſtice "ſhould have power to give judgment in other caſes of Treaſon, "nor in any other manner, than they had before the beginning "of this preſent Parliament;" which petition the King granted in all its points*.—Rot. Parl. Vol. III. p. 250. N° 38.

"of Impeachments, notwithſtanding a Diſſo- "lution," there are, in p. 119, the following judicious obſervations, very applicable to this ſubject. "The advantage, which Impeach- "ments afford, as a check and terror to bad "Miniſters, is ſo obvious and ſo great, that it "almoſt ſolely engroſſes the attention, and is "conſidered as the principal, if not the only "recommendation, of that mode of proſecu- "cution; but there is an additional reaſon, "why it ought to be cheriſhed by Engliſhmen; "which is, that it furniſhes the moſt effectual "preſervative againſt the corrupt adminiſtra- "tion of juſtice; and it ought perhaps, upon "experience, to be dearer to us upon this "ground, than upon any other, as it has been "employed with leſs mixture of vindictive, "or unwarrantable motives, when directed to "this object, than when its terrors have been "levelled againſt Favourites and Miniſters.— "That Miniſters are not now violating the "principles of the Conſtitution, or that the "adminiſtration of juſtice is now free from "the ſlighteſt ſtain or ſuſpicion of corruption, "furniſhes no reaſon for aboliſhing this mode "of trial; for it is impoſſible to know, how "much of the ſecurity, with which we now "enjoy our Conſtitution and Liberties, and "how much of the ſatisfaction, with which we "now confide in thoſe unſuſpected characters, "that now grace the ſeats of juſtice, may be "derived from the exiſtence of this very in- "ſtitution; the benefit of which (ſince pre- "vention is more deſirable than puniſhment) "cannot be more concluſively proved by any "means than by the few occaſions there have "been of late for exerting it."—When the Lords are about to pronounce judgment on theſe Judges and other perſons accuſed, the Archbiſhop of Canterbury, in his own name and that of his clergy, enters a proteſtation, deſiring leave to be abſent. The Biſhops of Durham and Carliſle do the ſame. This proteſt is recorded, and all the Lords Spiritual retire out of the Hall. Rot. Parl. Vol. III. p. 236.

* So in the 21ſt year of Richard II. 1397, Thirning, Chief Juſtice of the Common Bench, ſays, "That declaration of Treaſons, not al- "ready declared, belongs to the Parliament." —Rot. Parl. Vol. III. p. 358. See the ſtat. 1ſt Henry IV. Ch. x. which was made in conſequence of the proceedings in Parliament in the 21ſt year of Richard II.

OBSER-

# OBSERVATIONS

## *On* JUDGMENT BY THE LORDS.

The juriſdiction, which in ancient times was exerciſed by the High Court of Parliament, as well in civil as in criminal matters, is very well explained and illuſtrated in the Hiſtory of the Engliſh Law *:—" In the reigns of Edward I. Edward II. and Edward III. " we find records of proceedings in Parliament which inconteſtibly " verify, what was obſerved before on the judicial character of the " High Court of Parliament, and furniſh materials for forming an " accurate judgment of its judicature (whether civil or criminal) " not only during this period, but, as we conjecture, through all the " preceding reigns, up to the origin of the Norman Conſtitution.— " The great extent of their authority in judicial matters, ſeems " owing to the idea of ſuperintendance and ſupremacy, attributed " to the Parliament by the people: it was thought that this " aſſembly was to redreſs all wrongs, to remedy all abuſes, and to " remove all difficulties, with which any man was preſſed, either " in his perſon or property. In conſequence of this opinion, at " every meeting of Parliament petitions poured in from all quarters †, " not only upon ſubjects of public and national concern, but for " relief in private matters; and it appears from the Rolls of Par-

* Reeves's Hiſtory of the Engliſh Law, Vol. II. part. 2. ch. x.

† It was to obviate the complaints which aroſe from a delay of juſtice, and the inconvenience that the public experienced from Parliaments not being holden every year, to whom theſe petitions might be addreſſed, and from whom only relief was to be obtained, that the ordinance of the 5th of Edward II. was made, which directs, " That the King ſhall hold " a Parliament once in every year, or twice, " *ſi meſtier ſoit*;" which ordinance was afterwards enforced by the ſtatutes of the 4th and 36th of Edward III.—See upon this ſubject, the Note to Vol. II. of this Work, p. 276.—The Dictionnaire de Trevoux, explains the word " *meſtier*" ſometimes to mean *Opus*, *Neceſſitas*, but adds, " Il eſt vieux en ce ſens."

" liament, that theſe petitions were exhibited by all ſorts of perſons,
" upon all ſorts of matters, and to obtain every ſpecies of relief,
" which the petitioners thought moſt deſirable in their ſituation.
" —To diſtinguiſh between thoſe, which were properly within
" the cognizance of the Parliament, and thoſe that were not; and
" in order that thoſe which belonged properly to other courts
" might be duly remitted thither; certain Prelates, Earls, Barons,
" and others, were appointed in every Parliament to be * Receivers
" and Tryers of petitions †.—Theſe were to examine all Petitions,
" and, upon full conſideration, to indorſe upon them what courſe
" was to be purſued to redreſs the petitioner, and to direct him,

* I apprehend this not to be very accurately ſtated.—The perſons who were appointed *Receivers* of petitions, were ſome of the Maſters in Chancery, and of later times ſome of the Judges, attending upon the Houſe of Lords.—The *Tryers* only were Prelates and Peers.—This form of appointing Receivers and Tryers of petitions from Great Britain and Ireland, and alſo from Gaſcony, and the countries beyond the Seas, and the Iſles, is ſtill obſerved upon the commencement of every Parliament.—There is a chapter in Elſyng's *Manner of holding Parliaments*, upon this ſubject of Receivers and Tryers of Petitions, Ch. viii. p. 262.—On the 27th of October, 1705, after Queen Anne's ſpeech from the Throne, the Lords order, " That the names of the Re-
" ceivers and Tryers of Petitions be entered
" according to ancient cuſtom." It appears as if this form had been diſuſed, ever ſince the Revolution.—See the 6th of November, 1707, and the 18th of November, 1708, from which time, it has been conſtantly obſerved, at the commencement of every Parliament.—See Coke's 4th Inſt. p. 10. " *Petitions in Parliament.*"—On the 19th of January, 1740, the Houſe of Lords are moved, " That the entry,
" in the Journal, at the beginning of the Par-
" liament, of the names of the Receivers and
" Tryers of Petitions in French, might be
" read." And the ſame being read, a motion is made, on the 28th of January, " to order,
" That after the end of this preſent Parlia-
" ment, no entry be made in the Journals of
" this Houſe, of any appointment of Receivers
" or Tryers of Petitions for Great Britain and
" Ireland." The queſtion being put, it was reſolved in the negative. See, in Sir Matthew Hale's Juriſdiction of the Houſe of Lords, Ch. xii. " Concerning the Auditors and Tryers of Petitions."

† On the 1ſt of May, 1689, Lord Huntingdon acquaints the Houſe of Lords, " That
" he was ordered to report from the Commit-
" tee of Privileges, That they, finding the
" ſtatute of the 14th of Edward III. ch. 5, in-
" tituled " Delays of judgments in other
" courts ſhall be redreſſed in Parliament," is
" ſtill in force; by which ſtatute it is enact-
ed, " That at every Parliament ſhall be cho-
" ſen a Prelate, two Earls, and two Barons,
" who ſhall have commiſſions from the King
" to hear, by petition, all complaints of delays
" or grievances done to them in the Chan-
" cery, King's Bench, Common Pleas, and
" Exchequer:" Upon which, their Lordſhips
" having adviſed with Mr. Petyt, he deliver-
" ed in a report in writing." This report is read, and is entered in the Appendix to this Vol. N° 4.

" according

" according to the nature of his caſe, either to the full Parliament, " or to the Council, the Chancery *, or to ſome of the other " Courts.—It was not leſs common to petition Parliament in cri- " minal matters; when the parties were directed to ſue a writ of " oyer and terminer, or, as their caſe required, to take ſuch other " ſteps as the common law preſcribed.—But criminal proſecutions " were alſo inſtituted in Parliament by another way than by peti- " tion †.—They were frequently brought forward by articles exhi- " bited; but who were the perſons appointed to exhibit ſuch arti- " cles, or to ſtand forth as proſecutors, does not in every inſtance " appear. Towards the latter end of the reign of Edward III. the " Commons took this burthen upon themſelves; and among their " other petitions began to exhibit accuſations for crimes and miſ- " demeanors againſt offenders, who were thought to be out of the " reach

* In Dugdale's Origines Judiciales, ch. 16. p. 37, it is ſaid, " There are not found any " Bills or Decrees in Chancery, before the " 20th Henry VI. Such cauſes, as, ſince " that time, were heard in that Court, having " been formerly determined in the Lords " Houſe of Parliament, as may be ſeen, from " the number of petitions in Parliament of " that nature, which are yet extant."—See upon this ſubject, Sir Math. Hale's Juriſdiction of the Houſe of Lords, ch. 4. p. 26; and ch. 5, p. 33, where he ſays, " Many peti- " tions, which by reaſon of the diſſolution of " Parliament could not be there determined, " were referred, ſometimes to the Council in " general, and ſometimes to the Chancellor; " and this I take to be the true original of " the Chancellor's juriſdiction in matters of " equity; and what gave riſe to that multi- " tude of equitable cauſes to be there arbi- " trarily determined."—See alſo ch. 6. p. 44. of that work, publiſhed in 1796, with Mr. Hargrave's Preface.

† There is a very curious caſe, of a crimi- nal proſecution againſt Sir Thomas de Berkely, who was tried by a Jury of twelve Knights, " in full Parliament," for the murther of Ed- ward II. in Berkley Caſtle. He was acquitted of the murther; but, becauſe he had appoint- ed Gurney and others, who put the King to death, his keepers and ſervants in the ſaid caſtle, a day is given him to appear " in the " next Parliament " de audiendo judicio ſuo; and in the mean time he is committed to the cuſtody of the Steward of the Houſehold.— Rot. Parl. Vol. II. p. 57, N° 16.——Sir Math. Hale, in his Juriſdiction of the Houſe of Lords, ch. 16. p. 91. mentioning this caſe, ſays, " This Thomas de Berkely was *unque- ſ- " tionably* a Peer of the realm, and was ſum- " moned to, and ſat in, divers Parliaments, " before and after; yet, *he waived his trial* " *by Peers*, & ponit ſe ſuper patriam; the " only precedent I ever ſaw of a trial of a " Peer, by other than his Peers; and that by " a Jury appearing at the Lords Bar in Par- " liament."——I apprehend Sir M. Hale is miſtaken in this ſtate of the caſe. 1. The re- cord expreſsly calls him *Thomas de Berkely, Miles.* 2. There is nothing in the Roll about waiving his trial by his Peers. 3. As ſoon as he pleads, Not Guilty, and puts himſelf *ſuper pa- triam,*

" reach of the law; and in theſe proſecutions, the King and Lords " were conſidered as the Judges *."

From theſe ſources, with the alterations and improvements in the ſtate of the judicature of this country, which in the lapſe of time have taken place, may be deduced that juriſdiction, which the Houſe of Lords now exerciſe in civil cauſes †, upon appeals or writs of error from the inferior courts; and in criminal queſtions, when brought before them, by preſentment of the Houſe of Commons, in the form of an impeachment.—When this impeachment, either for treaſon, or for high crimes and miſdemeanors, is directed againſt a Peer, there has never been a doubt, but that the Lords have the ſole

*triam*, the jury, *omnes milites*, appear, and after trial acquit him, of the fact charged—*Ideo idem Thomas inde quietus*.

* Sir Mat. Hale, in commenting upon the old records, where judgments are ſaid to be given *in pleno Parliamento*, ſays, " It was al- " ways or moſt commonly the courſe, that, " when the Commons accuſed or impeached, " and the Lords were ready for judgment, the " Commons had notice, and then came up " with their Speaker, and demanded judg- " ment, which the Lords gave by the mouth " of their Speaker; ſo that this might be " ſaid to be done *in pleno Parliamento*, both " Houſes being preſent; and yet, the judg- " ment itſelf is given by the Lords, though " in the preſence of the Commons, and thus " far by their tacit conſent, as being the ac- " cuſers, and preſent at the judgment." Juriſdiction of the Houſe of Lords, p. 18.

† It appears from a great variety of inſtances, in the Rolls of Parliament, that the juriſdiction, exerciſed by the Lords, in civil caſes, was not ſo confined as to be neceſſarily concluded within the ſeſſion, or even within the term of the Parliament, in which the writ of error was brought.—See Rot. Parl. the caſe of William de Breouſe, Vol. I. p. 148, and ſeveral other inſtances, in Vol. III. p. 8, N° 29—p. 58, N° 19—p. 60, N° 20—p. 75, N° 19—p. 173, N° 21—p. 187, N° 15—p. 260, N° 15 and 16—p. 289, N° 22—p. 492, N° 26—p. 552, N° 31.—Rot. Parl. Vol. IV. p. 445, N° 40.—Theſe are but a very few of the caſes, which may be found by conſulting the Rolls, in which the proceedings were continued from Parliament to Parliament. See alſo in " The Report from the Lords Com- " mittees, appointed to examine Precedents " relative to the ſtate of the Impeachment " againſt Warren Haſtings, Eſq. brought up " from the Commons, and proceeded upon " in the laſt Parliament," the third claſs of Precedents, with the Appendix. Sir M. Hale indeed ſays, ſpeaking of ſome of theſe caſes, " I take it, that the granting or continuing " of a ſuperſedeas by the Lords Houſe, de- " pending a writ of error, until the next Par- " liament, as it hath been ſometimes done, " was not conſonant to law. For it would be " an intolerable delay of juſtice; for no Par- " liament poſſibly might be ſummoned in " ſeven years; and it were very unreaſon- " able, that the plaintiff's execution upon a " judgment obtained ſhould be ſo long de- " layed." Hale's Juriſdiction of the Houſe of Lords,

ſole and excluſive juriſdiction to hear and determine upon this accuſation.—So if a Peer is indicted for Treaſon or Felony, he cannot be tried in the courts below, but the indictment muſt be removed by Certiorari, and the Lords muſt pronounce judgment of Guilty or Not Guilty,—But where a perſon, not a Peer of the Realm, has been impeached by the Commons before the Lords for Treaſon, or any capital offence, there a doubt has been ſometimes entertained, whether, by the law of Parliament, the Lords have competent juriſdiction upon this ſubject; and in one inſtance * the Lords actually refuſed to proceed upon a trial of this nature, though, in ſeveral other caſes, as well before as ſince, they have admitted their competency, and have acted accordingly.—The Commons, however, have at all times aſſerted it to be their legal right, to impeach any perſon, whether Peer or Commoner, for any crime againſt the State, whether capital or not; and in the only inſtance that has occurred, in which the Lords diſputed this right, the Commons reſolved, "That "it is the undoubted right of the Commons, in Parliament aſſem-"bled, to impeach before the Lords, any Peer or Commoner for "treaſon, or any other crime or miſdemeanor: And that the refu-"ſal of the Lords to proceed in Parliament upon ſuch impeach-

Lords, ch. 29. p. 168. The inſtances, however, in which the practice has been contrary to this doctrine of Sir M. Hale, are, from their antiquity and number, more than ſufficient to decide that his opinion upon this point is not conſonant to law.—This obſervation is made with the more freedom, as it appears from Mr. Hargrave's Preface, p. ccxviii. "That "this work of Sir M. Hale, though perfect-"ed, had not, at the time of his death, been "reviſed by him, after it was written.

* The ſingle inſtance, that I find, in which the Lords have raiſed any objection to proceeding on the trial of a Commoner, upon an impeachment for a capital offence, is the caſe of Fitzharris, in 1681, which is to be found in the ſubſequent part of this work. The caſe of Simon de Beresford, mentioned before in the note p. 54, was not upon an "Impeach-"ment by the Commons," but "a proſecu-"tion at the ſuit of the King;" and therefore falls within the diſtinction made by Sir Edward Coke, in his Commentary upon the 29th chapter of Magna Charta, cited before in the note, p. 67. The period, at which the inſtance happened of the impeachment of Fitzharris, and the circumſtances attending it, render any arguments or concluſions, that may be drawn from that proceeding, of very little weight.

" ment, is a denial of juſtice, and a violation of the conſtitution of " Parliaments *."

This reſolution on the part of the Houſe of Commons, in the year 1681, grounded upon and ſupported by the great variety of inſtances, in which (as will appear in the courſe of this work) the Lords have exerciſed juriſdiction in Impeachments againſt Commoners for a capital offence; together with the proceedings of the Houſe of Lords, ſince the Revolution, upon a ſimilar queſtion brought before them in 1689 †, by the impeachment of ſeveral Commoners (in which, after conſulting precedents, and much deliberation, they reſolved to proceed upon the impeachment) appears to be a full and complete determination, what the law of Parliament is upon this queſtion ‡.

* See Journal, the 26th of March, 1681.

† See the Lords Journal, the 26th and 27th of June, and 2d of July, 1689, upon the impeachment of Sir Adam Blair, and others.

‡ See before, Note, p. 54 of this Volume. —And ſee alſo a Note in this Volume, in the Second Chapter of Impeachment, under Title " Form of delivering the Charge," in the caſe of Sir Robert Berkley, one of the Judges of the Court of King's Bench.

## III. *Bills of Attainder.*

1. IN the Parliament which met on the 13th of March, 1329, Edmund, Earl of Kent, uncle to Edward III. was attainted of high treaſon, and by the unanimous conſent of his Peers adjudged to death *.—Parliamentary Hiſtory, Vol. I. p. 198.

2. In the 21ſt year of Richard II. 1397, Thomas Mortimer being impeached and accuſed by the Commons of treaſon, and for that he was fled; It is ordered and eſtabliſhed by the King, with the aſſent of all the eſtates of Parliament, that proclamation ſhould be made, as well in England as in Ireland, that the ſaid Thomas ſhould ſurrender himſelf in his proper perſon within three months: and if he did not ſurrender, then to be convicted and attainted of all the treaſons of which he is accuſed, and to be holden as a Traitor to the King and Kingdom †.—Rot. Parl. Vol. III. p. 355, N° 19.

3. In

* In a letter written by the King to the Pope, dated the 24th of March, 1330, which is to be found in Rymer's Fœdera, Vol. IV. p. 424—the King, after reciting the crimes of which the Earl of Kent had been accuſed, adds, "Eiſdem Comitibus, Baronibus, Magnatibus, et *aliis de Communitate dicti regni ad Parliamentum illud congregatis*, injunximus, ut ſuper his diſcernerent et judicarent, quod rationi et juſtitiæ conveniret; qui eum, concorde et unanimi ſententia, tanquam reum criminis læſæ majeſtatis, morti adjudicarunt." The mention of the Commons in Parliament being parties to the judgment, makes it appear, as if the proceeding was by Bill, and not by indictment, or any other mode.—But ſee the account of this tranſaction more at large in Carte's Hiſtory of England, Vol. II. p. 402.—This attainder was afterwards reverſed in Parliament, at the prayer of Edmund, the ſon of the ſaid Earl of Kent, and of his widow Margaret, for the cauſes aſſigned in their petitions.—Rot. Parl. Vol. II. p. 55, N° 11 & 12.

† It appears from another entry in the ſame Parliament, that, Mortimer not appearing according to the proclamations made both in England and Ireland, the Duke of Lancaſter, and all the Lords Temporal, and the Earl of Wiltſhire (having ſufficient power from the prelates and clergy of England) with the conſent of the King, adjudged, that the ſaid

3. In 1453, the 31ſt year of Henry VI. a Bill of Attainder paſſed againſt Jack Cade and Sir William Oldhall *, for high treaſon, at the ſuit of the Commons †.—Rot. Parl. Vol. V. p. 265.

4. In 1459, the 38th of Henry VI. an Act of Attainder was paſſed againſt Richard Duke of York, and the Earls of Saliſbury, Warwick, and others, by which they were declared, adjudged, deemed, and attainted of high treaſon, as falſe traitors, and enemies againſt the King's Perſon, Majeſty, Crown, and Dignity.—To this petition of the Commons, which had been read in full Parliament, with the advice and conſent of the Lords Spiritual, and Commons, in Parliament aſſembled, the royal aſſent is given in the following terms;—"The King agreeth to this Act—ſo that by virtue "thereof he be not put from his prerogative to ſhew ſuch mercy "and grace, as ſhall pleaſe his Highneſs, according to his regalie "and dignitee, to any perſone or perſones, whos names be expreſſed "in this Acte, or to any other that might be hurt be the ſame." But as to Richard Lord Powys, and Walter Devereux, herein named, "Le Roi s'adviſera."—Rot. Parl. Vol. V. p. 346, et ſeq.

5. In the 1ſt year of Edward IV. 1461, an Act ‡ was paſſed to attaint ſeveral perſons, who had taken part in the civil wars between the Houſes of York and Lancaſter, by which they were adjudged to be attainted and convicted of high treaſon.—Rot. Parl. Vol. V. p. 476.

ſaid judgment made againſt the ſaid Thomas ſhould be effectual, and be in force, ſimply, and without condition.—Rot. Parl. Vol. III. p. 380, N° 9.

* This Sir William Oldhall had been Speaker of the former Parliament, in the 29th year of Henry VI.—Rot. Parl. Vol. V. p. 210, N° 6.

† The royal aſſent to the Bill againſt Jack Cade, is given in the uſual form, "Le Roi "le veut." But to the Bill againſt Sir William Oldhall, it is, "The King volle that it "be hadde and doon in maner and fourme "as it is deſird."—Rot. Parl. Vol. V. p. 266.

‡ This Act began in the Houſe of Lords, and being ſent to the Commons, they agreed to it in the form of words now uſed, "A "ceſte Acte le Coez ſount aſſentuz;" and the royal aſſent was given, "Le Roy le voet."—Rot. Parl. Vol. V. p. 483.

6. On the 21ſt of January, 1464, in the 4th year of Edward IV. a Bill began in the Houſe of Lords, by which Henry Somerſet,* Duke of Beaufort, and ſeveral perſons therein named, were declared to be convicted and attainted of treaſon. To this Bill the Commons agree, and the King gives the royal aſſent. By this Act a proclamation is directed to be iſſued to the Sheriffs of London and York againſt ſeveral other perſons, to appear at a particular time and place; and if they make default to appear, that then they ſhould ſtand and be convicted and attainted of high treaſon, and incur the penalties thereof.—Rot. Parl. Vol. V. p. 511, et ſeq.

7. In the 14th year of Edward IV. 1475, an Act was paſſed * attainting ſeveral perſons therein named of high treaſon, and ſubjecting them to the penalties thereof.—Rot. Parl. Vol. VI. p. 144.

8. In 1485, the 1ſt year of Henry VII. a Bill of Attainder was brought into the Houſe of Lords againſt ſeveral perſons that had taken part with Richard III. whereby the ſaid perſons are declared to ſtand, and be convicted and attainted of high treaſon, and diſabled and fore-judged of all manner of honours, eſtate, dignity, and pre-eminence, and to incur the forfeitures attending the ſaid crime. —To this Bill the Commons agree; and the King's aſſent is, "Le "Roi le voet, en toutz pointz."—Rot. Parl. Vol. VI. p. 275, 278.

* See the preamble to this ſtatute in the Rot. Parl. in which, after reciting the commotions and inſurrections that had happened, and that had lately been repreſſed, and that the King, "movyd with benygnitie and pite, and "leiyng aparte the grete rigour of the lawe, "hath graunted to dyvers perſones his grace "and pardon: yet conſidering that thos per-"ſones, whoos names been under writen, "were grete and ſinguler movers, ſtirrers, "and doers of the ſaid offenſes and haynous "treaſons; and alſo to th' intent that benig-"nite and pite be not ſo exhalted, that juſ-"tice be ſett a parte, nor that juſtice ſo pro-"cede, that benignite and pite have no place, "but that a dewe moderation and tempera-"ment be obſerved on every behalfe, as ap-"perteyneth; and to eſchewe the manifold "and irreparable jeopardies and inconveni-"ences, that elſe might and be like to fol-"lowe"—the Bill enacts, &c.

9. In

9. In 1487, the 3d year of Henry VII. an Act of Attainder paſſed againſt John Earl of Lincoln, and ſeveral others, for the part they had taken, in ſetting up Lambert Symnell as King;—for which it is enacted, that they ſhall be reputed, judged, and taken as traitors, and convicted and attainted of high treaſon.—Rot. Parl. Vol. VI. p. 397.

10. In the ſame year, the 3d of Henry VII. John Spynell, and others, having aſſembled, and having confederated, imagined, and compaſſed commotions, rumours, and inſurrections, to have ſlain, murthered, and deſtroyed divers of the King's great officers, and other of his moſt honourable council—which malice and falſe purpoſe, if it had taken effect, would have cauſed not only the deſtruction of them, but have been alſo to the great jeopardy of all the Nobles of the realm *: It is therefore ordered by authority of

* Before the paſſing of this Act, a general law had been made, in the ſame ſeſſion of Parliament, whereby any of the King's ſervants, whoſe name was upon the cheque-roll of the Houſehold, and who was under the degree of a Lord, who ſhould make any confederacies, compaſſings, conſpiracies, or imaginations, with any perſon, to deſtroy or murther the King, or any Lord of the realm, or any other perſon ſworn to the King's Council, or Steward, Treaſurer, or Comptroller of the King's houſe, ſuch ſervant ſhall be put under enquiry by a jury of twelve ſad and diſcreet perſons of the checque-roll of the King's Houſehold; and the ſaid Steward, Treaſurer, and Comptroller, or any two of them, ſhall have power to determine the ſaid matter according to law. —And if he put him on trial, that then it be tried by other twelve ſad men of the ſaid Houſehold; and if ſuch miſdoers be found guilty, the ſaid offence ſhall be judged felony, and they ſhall have judgment and execution, as felons attainted ought to have by the common law.—Stat. 3d Henry VII. ch. 14.

See Sir Edward Coke's Commentary upon this ſtatute, in the 3d Inſt. ch. 4.—Although this general law ſtands upon the Parliamentary roll (N° 26) before the particular Act againſt John Spynell and others (N° 27) it ſhould ſeem by ſome expreſſions in the preamble, that it was occaſioned by the attempts of John Spynell and his adherents.—Lord Bacon obſerves, "That this law was ſomewhat "of a ſtrange compoſition and temper; and "was thought to be procured by the Lord "Chancellor (Morton, then Archbiſhop of "Canterbury) who being a ſtern and haughty "man, and finding he had ſome mortal ene-"mies in Court, provided for his own ſafety; "drowning the envy of it in a general law, "by communicating the privilege with all "other Counſellors and Peers; and yet not "daring to extend it farther than to the King's "ſervants in checque-roll, leſt it ſhould have "been too harſh to the Gentlemen and other "Commons

of Parliament, that they the ſaid John Spynell, and the other perſons named, for the ſaid offences be had, taken, and reputed as felons and ſtand and be convicted and attainted of felony, and ſhall forfeit, lands, goods, and chattels, as if they were convicted and attainted of felony after the courſe of the common law. To this Act the King aſſents—" Le Roi le voet."—Rot. Parl. Vol. VI. p. 402.

11. In 1489, the 5th of Henry VII. an Act of Attainder was paſſed againſt the Abbot of Abington, John Mayne, and others, for falſely and traitorouſly aſſembling, and conſpiring and imagining the death of the King, and the ſubverſion of his realm. Wherefore the ſaid John Mayne and others, by authority of Parliament, are adjudged, deemed, and attainted of High Treaſon.—But it is provided, that this Act be not prejudicial nor hurtful to the King's royal prerogative, nor to the prejudice of the common law of the land *.—Rot. Parl. Vol. VI. p. 436, N° 38.

12. In the 11th year of Henry VII. 1495, an Act of Attainder was paſſed againſt Lord Lovell, for having been concerned with the Earl of Lincoln, in 1487, in traitorouſly imagining and compaſſing the death of the King, by an inſurrection, by which Act Lord Lovell was deemed and adjudged convicted and attainted of High Treaſon †.—Rot. Parl. Vol. VI. p. 502.

13. The entries in the Journal of the Houſe of Lords, of the

" Commons of the kingdom, who might have " thought their ancient liberty, and the cle- " mency of the laws of England, invaded, if " *the will*, in any caſe of felony, ſhould be made " *the deed*."—Life of Henry VII. Bacon's Works, Vol. II. p. 291.—Is it not remarkable, that ſuch a law ſhould be ſuffered to ſtand upon the Statute Book at this day unrepealed?

* See alſo the caſe of Sir Robert Chamberlayne, in the 7th of Henry VII.—Rot. Parl. Vol. VI. p. 455, N° 16.

† See alſo the proceedings againſt the perſons concerned in Perkin Warbeck's Rebellion. —Rot. Parl. Vol. VI. p. 503, N° 39; and againſt Lord Audley and others, p. 544, N° 21.

Bill of Attainder * which paſſed againſt Empſon and Dudley in 1509, the firſt year of Henry VIII. are very ſhort, and not very intelligible.—Lords Journals, the 21ſt, 22d, and 23d of February, 1509.

14. In 1523, the 14th year of Henry VIII. an Act of Attainder † paſſed againſt the Duke of Buckingham, for certain Treaſons for which he had been indicted, and tried by his Peers, in the 13th of Henry VIII. before Thomas Duke of Norfolk, Great Steward of England for the time, and had been found guilty, and executed.—This Act is inſerted in the Rot. Parl. which are printed at the beginning of the firſt volume of the Lords Journals, p. cv.

15. In the ſame year, the 14th of Henry VIII. a general law was paſſed, to enable the King, during his life, by letters patent, at his pleaſure, to reverſe, repeal, and annul all Attainders of High Treaſon, whether by authority of Parliament or by the common law, that had been ſince the 22d of June, in the 1ſt year of Richard III. and to reſtore the ſaid perſons and their heirs, in name, blood, pre-eminence, and dignity, and in their caſtles, lands, tenements, &c. &c.; and that the ſaid letters patent ſhould have the ſame effect, as

* Lord Herbert, of Cherbury, in his Hiſtory of the Life and Reign of Henry VIII. ſays, "That in the following year, Empſon "and Dudley, being now in priſon, *condemned* "*and attainted by Parliament*, the importunate "clamours of the people prevailing with the "King, he by a ſpecial writ commanded to "have their heads cut off, on the 18th of "Auguſt, 1510; doing therein, as thought by "many, more like a good King than a good "maſter."—Carte ſays, "That they were "charged with a treaſonable conſpiracy a-"gainſt the Crown; as having in the laſt March, "during the late King's illneſs, ſummoned "certain of their friends, to be in arms at an "hour's warning, upon the ſaid King's de-"ceaſe, to make haſte to London."—Hiſtory of England, Vol. III. p. 4.

In the following year, a Bill was brought into the Houſe of Lords, and was paſſed, for reſtoring to the heirs of Sir Edmund Dudley their poſſeſſions.—Lords Journals, Vol. I. p. 15.

† It does not appear what occaſion there was for ſuch an Act, unleſs what is ſuggeſted in Vol. III. of the Parliamentary Hiſtory, p. 37, be true, "That Cardinal Wolſey, being "publicly accuſed of having ſacrificed this "Nobleman to his vengeance, had intereſt "enough to obtain this Act, in order to divert "the odium thrown upon him for it."

if the ſaid repeal and reſtitution had been enacted, eſtabliſhed, and authorized by authority of Parliament *.

16. The articles which in 1529 were exhibited in Parliament againſt Cardinal Wolſey, are not entered in the Lords Journals, nor amongſt the Rolls of Parliament printed in the firſt Volume of the Journal; but are to be found in Lord Herbert's Hiſtory of Henry VIII. and are from thence tranſcribed into the Parliamentary Hiſtory, Vol. III. p. 42 †.—They appear to have been drawn up by a Committee of Lords, of which Sir Thomas More, Lord Chancellor, was one, aſſiſted by the two Chief Juſtices. Lord Herbert ſays, "A copy "of them was then ſent down to the Lower Houſe, for their peruſal "and approbation.—But amongſt the Commons, the Cardinal's cauſe "was ſo well defended by his Secretary Cromwell, then a Member, "that he abſolutely cleared his Maſter from any charge of Treaſon, "and he was fully acquitted thereof."

17. In 1536, on the 24th and 25th days of the Parliament which met in the 28th year of Henry VIII. the Lord Chancellor Audley preſented two Bills in the Houſe of Lords, one for the Attainder of Thomas Fitzgarret and his five Uncles; the other for the Attainder of Thomas Lord Howard ‡.—Both Bills were read three times by

* This Act is not printed in the Statutes at Large, but is inſerted in the Parliamentary Roll, in Vol. I. of the Lords Journal, p. cxxi.

† They are alſo printed in Coke's 4th Inſt. p. 89.

‡ The crime alleged againſt this Nobleman, was, the having affianced or contracted to marry with the Lady Margaret Douglas, the King's Niece, without the King's conſent.—He was for this attainted of High Treaſon, and a general law was made, (28th Henry VIII. Ch. 18.) which enacted, "That it "ſhall be High Treaſon for any man to "eſpouſe, marry, or take to wife, any of the "King's children, being lawfully born, or "otherways commonly reputed for his chil-"dren; or any of the King's ſiſters or aunts "on the part of the father; or any of the "lawful children of the King's brethren or "ſiſters; or to contract matrimony with any "of them, without the King's licence firſt had "under the Great Seal; or to deflour any of "them being unmarried."—This Act, with many others that had created new Treaſons and Felonies, was repealed by the 1ſt Edward VI. Ch. 12.—and by the 1ſt Mary, Seſſ. 1. Ch. 1.

the Lords in the ſame day on which they were preſented; and returned from the Commons, the firſt, upon the next day to that in which they had received it; and the latter, upon the very ſame day it came from the Lords, viz. on the laſt day of the Parliament, when the King came and gave the royal aſſent.

18. On Saturday the 10th of May, 1539, the Lord Cromwell, at this time the King's Vice-Gerent in ſpiritual matters, and Lord Privy Seal, preſented a Bill of Attainder againſt the Marquis of Exeter *, and Edward Neville, and others, which was read twice upon that day †, and a third time on the Monday following. It was returned from the Commons on Friday the 16th, with a clauſe, including the names of other perſons, which was agreed to by the Lords.—Lords Journals, Vol. I. p. 107, et. ſeq.

19. On the 10th of June, 1540, Thomas Cromwell, Earl of Eſſex, and Vice-Gerent ‡, was committed to the Tower by the Lords of the

* It ſhould ſeem, from Lord Herbert's account of this tranſaction, that both the Marquis of Exeter and Sir Edward Neville, had been already tried, the firſt in December, 1538, by his Peers, the Lord Audley ſitting as High Steward; and the other, by a Jury; and that they had both been found guilty and executed: and he adds, "The particular offences yet "of theſe great perſons, are not ſo fully "made known to me that I can ſay much."—Life of Henry VIII. in Kennet, Vol. II. p. 216.

† After the ſecond reading, the Bill was not referred to a Committee, but ordered to be ingroſſed—"Traditur Clerico Parliamento-"rum, in pergamenam redigenda."

‡ It appears from the Lords Journal of the Parliaments 1539, and 1540, That whilſt Cromwell held this office of Vice-Gerent in matters ſpiritual, he had precedence of the Archbiſhop of Canterbury. By the Statute 31ſt Henry VIII. ch. 10, intituled, "For "placing of the Lords," it is enacted, "That "the Lord Cromwell, having the office of "Vice-Gerent, and all other perſons, which "hereafter ſhall have the ſaid office, ſhall ſit "and be placed on the ſame form that the "Archbiſhop of Canterbury ſitteth on, and "above the ſame Archbiſhop and his ſucceſ-"ſors: and ſhall have voice to aſſent or diſſent, "as other the Lords of Parliament." This office was created by Henry the VIIIth, after he was acknowledged "Supreme Head of the "Church of England," by an Act of Parliament paſſed in 1534, and was granted to Lord Cromwell, "for the good exerciſe of the ſaid "moſt royal dignity and office."—I do not know, that this office of Vice-Gerent was ever held by any other perſon: the power exerciſed by him was, by the 1ſt of Elizabeth, Ch. 1. ſect.

the Council, for High Treaſon; and on the 17th of June a Bill of Attainder was brought in againſt him, which was read a ſecond and third time on the 19th *, and paſſed the Lords "Ne-
"mine

ſect. 18, transferred to Commiſſioners, whom the Queen, by that ſtatute, was authorized to appoint; and who formed that High Commiſſion Court with Eccleſiaſtical Juriſdiction, againſt which ſuch complaints were made in the reign of Charles the Iſt; and which was therefore finally aboliſhed by the Statute 16th Charles I. Ch. 11, by which it was alſo enacted, "That no new Court ſhall hereafter be "erected with the like power, juriſdiction, or "authority." Notwithſtanding this clauſe, James the IId, in the year 1686, by the advice of Jefferies, erected a ſimilar Court, "without" (as Burnet ſays) "calling it the "High Commiſſion, but pretending that it "was only a ſtanding Court of Delegates. "They had full power to proceed in a ſummary and arbitrary way in all Eccleſiaſtical "matters, without limitation to any rule of law "in their proceedings."

*Hiſtory of his Own Times, Vol.* I. *p.* 675.

In the 4th volume of the State Trials, p. 243 to 278, there are ſeveral proceedings held before this Court on complaint, (1.) againſt Compton, Biſhop of London, for not ſuſpending Dr. Sharp; (2.) againſt the Univerſity of Cambridge, for not admitting Alban Francis to a degree; and (3.) againſt Magdalen College, in Oxford, for not electing Anthony Farmer preſident. A copy of the King's Eccleſiaſtical Commiſſion is inſerted at the commencement of theſe proceedings, p. 243.—By the Bill of Rights, 1ſt William and Mary, ſeſſ. 2. ch. 2, it is declared, "That "this Commiſſion for erecting the late Court "of Commiſſioners for Eccleſiaſtical cauſes, "and all other Commiſſions and Courts of "the like nature, are illegal and pernicious."—See in the 8th volume, State Trials, Appendix, p. 557, the opinion of all the Judges, and of the Attorney and Solicitor General, in the year 1711, "How far the Convocation "are, by law, authorized to proceed in ex-"amining, cenſuring, and condemning ſuch "tenets, as are declared to be hereſy, by the "laws of the realm."

* Sir Edward Coke, in the 4th part of his Inſtitutes, Ch. 1. p. 37, ſpeaking of this Act, ſays, "And albeit I find an Attainder by "Parliament of a ſubject for High Treaſon, "being committed to the Tower, and forth-"coming to be heard, and yet never called to "anſwer in either Houſe of Parliament; (al-"though I queſtion not the power of Parlia-"ment, for without queſtion, the Attainder "ſtandeth of force in law) yet this I ſay of "the manner of proceeding, *Auferat oblivio, "ſi poteſt; ſi non, utcumque ſilentium tegat.* For "the more high and abſolute the juriſdiction "of the Commons is, the more juſt and ho-"nourable it ought to be in the proceeding, "and to give example of juſtice to inferior "Courts. But it is demanded, ſince he was "attainted by Parliament, what ſhould be the "reaſon, that our Hiſtorians do all agree in "this, That he ſuffered death by a law, that "he himſelf had made? For anſwer hereof, "I had it of Sir Thomas Gawdie, Knight, "a grave and reverend Judge of the King's "Bench, who lived at that time, That King "Henry VIII. commanded Cromwell to at-"tend the Chief Juſtices, and to know, "'Whether a man, that was forthcoming, "might be attainted of High Treaſon by "Parliament, and never called to his an-"ſwer?' The Judges anſwered, 'That "it was a dangerous queſtion; and that "the High Court of Parliament ought "to give examples to inferior courts for "proceeding according to juſtice; and that no "inferior Court *could* do the like; and they
"thought

" mine Diſcrepante *."—Lords Journals.—See alſo the 29th of June, 1540.

20. On the 18th of January, 1546, a Bill for the Attainder of Thomas Duke of Norfolk, and Henry Earl of Surrey, was brought into the Houſe of Lords and read 1°,—It paſſed the Lords on the 20th of January, and the Commons on the 24th †.

21. On

" thought the High Court of Parliament " *would* never do it.' But, being by the expreſs " commandment of the King, and preſſed by " the ſaid Earl Cromwell to give a direct " anſwer, they ſaid, " That if he be attainted " by Parliament, it could not come in queſ- " tion afterwards, whether he were called or " not called to anſwer." And (Sir Edward " Coke goes on to ſay) albeit their opinion " was according to law, yet might they have " made a better anſwer; for, by the ſtatutes " of Magna Charta, Ch. 29—the 5th Edward " III. Ch. 9.—and 28 Edward III. Ch. 5. " —" no man ought to be condemned with- " out anſwer," which they might have " certified.—But, *facta tenent multa, quæ fieri " prohibentur*; the Act of Attainder, being " paſſed by Parliament, did bind, as they re- " ſolved. The party, againſt whom this was " intended, was never called in queſtion; but " the firſt man after the ſaid reſolution, that " was ſo attainted, and never called to anſwer, " was the ſaid Cromwell, Earl of Eſſex; " whereupon that erroneous and vulgar opinion " amongſt our Hiſtorians grew, " That he " died by the ſame law which he himſelf had " made."—I wonder Sir Edward Coke, who loved quotations, did not add, what could in no inſtance be more properly applied, than in this of Cromwell—

*Nec Lex eſt æquior ulla,*
*Quam necis artifices arte perire ſuâ.*

—Hume gives the following character of Cromwell; " He was a man of prudence, induſtry, " and ability; worthy of a better maſter and of " a better fate.—Though raiſed to the ſummit " of power from a very low origin, he betray- " ed no inſolence or contempt of his inferiors; " and was careful to remember all the obliga- " tions which, during his lower fortune, he had " owed to any one. In the early part of his " life he had ſerved as a private centinel in " the Italian wars."—Hiſtory of Henry VIII. Ch. 6. See alſo Burnet's Hiſtory of the Reformation, Vol. I. p. 172.

* It appears from the liſt of Bills which received the royal aſſent on the 24th of July, 1540, the laſt day of the Parliament, that ſeveral other Bills of Attainder paſſed in this Seſſion: ſome for High Treaſon, one for Hereſy, and one for Theft and Felony.—See in the Lords Journal a curious entry of the form of the King's coming to the Houſe of Lords, the manner of the Lords receiving him in their robes, and of the Speaker, with the Commons, coming to the bar; and the ſeveral ſpeeches of the King, Chancellor, and Speaker, upon that occaſion.

† It appears from an entry in the Lords Journal of the 27th of January, that the Lord Chancellor declared to both Houſes, that the reaſon for expediting this Bill without delay, was, that the King wiſhed to confer the offices, which the Duke held, upon ſome other perſon, who might execute the ſame at the approaching ceremony of the coronation of his ſon Edward Prince of Wales.—And that therefore a commiſſion had paſſed for giving the royal aſſent

to

21. On the 25th of February, 1548, a Bill of Attainder againſt the Lord Seymour of Sudely, Admiral of England, was brought into the Houſe of Lords, and agreed to on the 27th, communi omnium procerum aſſenſu, and was ſent back from the Commons on the 5th of March *.

22. On the 12th of April, 1552, the Lords make amendments to a Bill, which had come from the Commons, for ſettling the lands of the late Duke of Somerſet, by annexing to it a clauſe, confirming the attainder of the ſaid Duke and the others therein mentioned †.

23. On the 6th of November, 1555, a Bill is brought into the Houſe of Commons for taking away the benefit of Clergy from one Bennet Smythe, for the murther of Rufford.—This Bill paſſed both Houſes, and received the royal aſſent on the 9th of December following.

24. On the 28th of April, 1571, a Bill was brought from the Lords, for the confirmation of the Attainder of the late Earls of Northumberland and Weſtmoreland, and others, which paſſed the

to this Bill.—This was on Thurſday, and the King died early on Friday morning.—This Act of Attainder was afterwards reverſed in the 1ſt year of Queen Mary.—See the Hiſtory of the Reverſal in the 2d Vol. of this Work, p. 319.

* It is but too true, (as ſtated in the Parliamentary Hiſtory, Vol. III. p. 238) that it appears by the Lords Journals, that the Protector, Duke of Somerſet, brother to the Admiral, was preſent in the Houſe upon the ſeveral days when the Bill was read.—Afterwards, on the 2d of March, when a meſſage was ſent to the Commons by the Maſter of the Rolls, and others, to acquaint them with the nature of the evidence upon which the Lords had paſſed the Bill, the Lords deſire the "Lord Protector" to receive ſuch anſwer as the Commons ſhall ſend back to their meſſage, and to report it to them at their next ſitting.—The warrant, for the Lord Admiral's execution, was alſo ſigned by his brother, the Lord Protector; as appears from a copy of it, inſerted in the collection of Records to the 2d Vol. of Burnet's Hiſtory of the Reformation, p. 164, N° 32.—The proceedings in Parliament upon this Bill are publiſhed in the State Trials, Vol. VII. p. 1.

† It does not clearly appear, from the Journal of either Houſe, whether the Commons agreed to this amendment.—See what is ſaid upon this ſubject in the Parliamentary Hiſtory, Vol. III. p. 262.—"That the Commons would not agree to this clauſe, though they paſſed the Bill of Repeal."

Houſe

Houſe of Commons on the 15th of May, with ſeveral amendments and ſavings *.

25. In March, 1586-7, a Bill paſſed for confirming the Attainder of Thomas late Lord Paget, and others. Having been concerned in the conſpiracy, on account of Mary Queen of Scots, they had been already tried and executed; but by this Act all their goods and poſſeſſions were confiſcated.—Parliamentary Hiſtory, Vol. IV. p. 308.

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## OBSERVATIONS

### *On* BILLS OF ATTAINDER.

We learn from theſe inſtances, as was obſerved before, how frequently this meaſure, of proceeding by Bill of Attainder, was adopted during the reigns of the Tudors, particularly by Henry VII. inſtead of the ancient, and, where juſtice can be obtained by a regular trial in a court of criminal juriſdiction, the more eligible proceeding by indictment or impeachment.

The Acts, during this period, appear principally to have had for their object, perſons concerned in raiſing traitorous and tumultuous inſurrections; and became, during the civil wars between the Houſes of York and Lancaſter, alternately the engine of the prevailing party,

* It appears from the Journal, that on the ſecond reading of the Bill, on the 5th of May, Sir Henry Percy, one of the perſons included in the Bill, was preſent, and was heard by his Counſel, Mr. Fettyplace.

to wreak their vengeance againſt ſuch of their enemies, as had taken part with their competitors for the Crown.

The caſes of Empſon and Dudley, and of Cromwell Earl of Eſſex, are inſtances, in which the parties accuſed would have been the proper objects of Parliamentary impeachment, for High Crimes and Miſdemeanors, in their conduct as Miniſters, or Officers employed by the Crown: but the impatient and overbearing ſpirit of the Sovereign, and that arbitrary power, which Henry VIII. from a variety of concurring circumſtances, was enabled to exerciſe againſt every part of the Conſtitution, rendered the ſummary proceeding by Bill of Attainder the more proper for his purpoſes.

Blackſtone, in treating of the ſubject of Parliamentary proceedings, ſays*, "As for Acts of Parliament to attaint perſons of Treaſon or Felony, or to inflict pains or penalties beyond or contrary "to the common law, to ſerve a ſpecial purpoſe, I ſpeak not of "them, being to all intents and purpoſes new laws made pro rê "natâ, and by no means an execution of ſuch as are already in be-"ing.—Whereas an impeachment before the Lords, by the Com-"mons of Great Britain in Parliament, is a proſecution of the "already known and eſtabliſhed law, and has been frequently put "in practice; being a preſentment, to the moſt high and ſuperior "court of criminal juriſdiction, by the moſt ſolemn grand inqueſt "of the whole kingdom."—If, by this mode of expreſſion, that learned Judge could be underſtood to inſinuate an opinion, that this proceeding by Bill is in no caſe expedient or proper; or, that it would be more beneficial, that the higheſt and moſt daring criminals againſt the State ſhould eſcape with impunity, on account of a defect of evidence, or the want of ſome particular form which would be neceſſary for their conviction in a court of law, rather than that their crimes ſhould be brought to the conſideration of Parliament;

* Blackſtone's Commentaries, Book iv. Ch. 19. p. 256.

and that there they ſhould be amenable to juſtice, " though by a law " made pro rê natâ, or (to uſe the more invidious expreſſion) to " ſerve a ſpecial purpoſe;" if this was his meaning, it appears to eſtabliſh a doctrine, from which, if ſtrictly adhered to, the public might receive much detriment. Although it is true, that this meaſure of paſſing Bills of Attainder, or Bills of Pains and Penalties, has been uſed as an engine of power; and, in the reign of bad princes, has been frequently abuſed to the oppreſſion of innocence, it is not therefore juſt to conclude, that no inſtances can occur, in which it ought to be put in practice.—Caſes have ariſen (and in a period ſince the true principles of liberty have been perfectly underſtood and carried into effect) and may again ariſe, where the public ſafety, which is the firſt object of all government, has called for this extraordinary interference; and, in ſuch inſtances, where can the exerciſe of an extraordinary power be veſted with more ſecurity, than in the three branches of the legiſlature? It ſhould, however, always be remembered, that this deviation from the more ordinary forms of proceeding by indictment or impeachment, ought never to be adopted, but in caſes of abſolute neceſſity; and in thoſe inſtances only, where, from the magnitude of the crime, or the imminent danger to the ſtate, it would be a greater public miſchief to ſuffer the offence to paſs unpuniſhed, than even to over-ſtep the common boundaries of law; and, for the ſake of ſubſtantial juſtice and the ſecurity of poſterity, by an exemplary though extraordinary proceeding, to mark with infamy and diſgrace, perhaps to puniſh with death, even the higheſt and moſt powerful offenders *.

* Sir John Hawles, who was Solicitor General during great part of the reign of King William, whilſt Lord Somers was Chancellor, ſays, in his remarks on the trial of Fitzharris, ' In all times the Parliament have practiſed " (and it is neceſſarily incident to all ſupreme " powers, in all governments) to enact or " declare extravagant crimes to be greater, " than by the eſtabliſhed law they are declared to be. And it is no injuſtice for the " ſupreme power to puniſh a fact, in a higher " manner than by law eſtabliſhed, if the fact " in its nature is a crime, and the circumſtances make it much more heinous than " ordinarily ſuch crimes are."

*State Trials, Vol.* IV. *p.* 172.

## IV. *Bills of Pains and Penalties.*

1. IN the Parliament which met on the 15th of July, 1321, an Act was paſſed, which, after reciting ſeveral crimes committed by Hugh le Deſpencer the father, and Hugh le Deſpencer the ſon, awards, "That the father and ſon ſhall be both diſherited "for ever, as diſheritors to the Crown, and enemies to the King "and his people; and ſhall be baniſhed the kingdom of England, "never to return again, unleſs it be by the aſſent of the King, and "by aſſent of the Prelates, Earls, and Barons in Parliament duly "ſummoned *."

2. There is a very uncommon proceeding recorded in the Parliamentary Roll, Vol. II. p. 297, N° 20, which, though it does not properly come under this title, or indeed that of any other regular Parliamentary proceeding, ought not to be paſſed over.—On the 21ſt of May, 1368, the 42d year of Edward III. the King, Prelates, Lords, and Commons, being in the White Chamber (after the buſineſs was over of reading the Petitions and Anſwers, with the Aid granted by the Commons and the King's thanks,) there ſtaid and

* This Act, which is printed at length in the Appendix to the Statutes at Large, Vol. IX. p. 16, and is tranſlated in Vol. I. of the Parliamentary Hiſtory, p. 160, begins, "The "Prelates, Earls, Barons, and other Peers "and Commons of the Realm, do ſhew "againſt Sir Hugh le Deſpencer, &c." and, after ſtating the ſeveral articles of accuſation, concludes, "Which wickedneſſes "being notorious and true, as it is found "by the examination of the Earls, Barons, "and other Peers of the Land, Therefore "We, the Peers of the Land, Earls, and Barons, in preſence of our Lord the King, do "award, &c. &c."—The next year, 1322, another Act was paſſed, revoking this their ſentence of baniſhment, for various reaſons; one of which was, "That the ſaid award was "made without calling them to anſwer, and "without the aſſent of the Prelates, who are "Peers of the Realm in Parliament, and "againſt the Great Charter of the Franchiſes "in England, which ſays, *No freeman ſhall be "baniſhed, or otherwiſe deſtroyed, but by the "lawful judgment of his Peers, or the law of "the land.*"—Parliamentary Hiſtory, Vol. I. p. 173.

dined with the King—all the Lords, and many of the Commons; —and after dinner, returning into the White Chamber, Sir John Lee was brought before them, and accuſed of divers miſdemeanors *; of impriſoning William Latimer; and, as Steward of the King's Houſehold, for attacking divers perſons, and making them anſwer to him, out of Council.—On which articles Sir John Lee, not being able ſufficiently to excuſe himſelf by law, was committed to the Tower of London until he ſhould pay a fine, according to the King's pleaſure.—And then the Prelates, Dukes, Earls, Barons, and Commons, departed.

3. In the 7th year of Henry VII. 1492, John Hayes, having received a letter from a perſon in Normandy, who had been a rebel and traitor, touching ſome attempt to be made againſt the King; and Hayes having burnt the letter, and concealed the contents of it, and having ſuffered the meſſenger who brought it to go away, and having confeſſed and acknowledged the ſaid charge; an Act is paſſed, That the ſaid John Hayes, being convicted of miſpriſion by him committed againſt the King, of and for his unlawful demeaning and concealment in the premiſes, do forfeit all his goods, and be committed to priſon till he hath made fine and ranſom for the ſame. —Rot. Parl. Vol. VI. p. 454.

4. In January, 1549, a Bill is paſſed for diſinheriting for his life, William Weſt, for having attempted to poiſon the Lord Lawarr †.

5. On

* This accuſation aroſe partly out of a petition preſented in Parliament from William Latimer, which is entered on the Roll, N° 21; but there were ſeveral other articles of charge, which, by order of the Lords, were urged againſt him, by Sir Robert de Thorpe, Chief Juſtice of the Common Pleas.—See what is ſaid before, on this caſe, in the Note, p. 62.

† It ſhould ſeem, as if two Bills had been depending for this purpoſe at the ſame time, one beginning in the Commons, and the other in the Lords; but, from the very ſhort and inaccurate entries in the Journals of that period, the proceeding upon them is not eaſily aſcertained. It appears, that upon the 23d of January, 1549, William Weſt, a priſoner in the Tower, is brought to the Houſe of Commons, and clearly denies the fact; but confeſſed his hand to be at the confeſſion, which, he ſaid, he did for fear.—Several witneſſes were then brought

5. On the 9th of November, 1555, a Bill is read 1° in the Houſe of Lords, for the debarring of Ann Calthorpe, the late divorced wife of the Earl of Suſſex, from her jointure, or dower, in caſe ſhe ſhall not repair into the Realm, within a time limited, aad make her purgation * before the Biſhop of her dioceſe.—It did not paſs this Seſſion, being rejected by the Commons; but a Bill to the ſame effect was ſent from the Commons to the Houſe of Lords, on the 19th of February, 1556, was agreed to on the 21ſt of February, and received the Royal Aſſent on the 7th of March.

6. On the 20th of April, 1571, a Bill againſt Fugitives is brought into the Houſe of Commons, and paſſed both Houſes † in the courſe of the Seſſion.—The object of this Bill was to recall ſeveral perſons that had fled beyond ſea, who had been concerned in the late Rebellion, or had withdrawn themſelves on account of religion.—They were to return within a limited time, under the penalty of forfeiting the profits of their lands during their life, and alſo all their goods and chattels ‡.

brought in and examined, and on the 25th of January, the Bill was there read 3° and paſſed by the Commons. On the 1ſt of February this Bill received the Royal Aſſent.

* It is ſaid in the Parliamentary Hiſtory, Vol. III. p. 349, that this lady had left her huſband, and lived in France in open adultery, and had ſeveral children by others.

† From the entries in the Journal of the Houſe of Commons of the proceedings on this Bill, upon the 20th, 24th, and 28th of April, and the 1ſt of May, it appears that there was much doubt entertained of its expediency, as it was never read without many and long arguments.

‡ See Statutes at Large, 13th Eliz. ch. 3. and the Parliamentary Hiſtory, Vol. IV. p. 100.—The abſtract, as printed in the Statutes at Large, ſays, "If any born within this realm, or made free denizen, hath departed or ſhall depart the realm, without the Queen's licenſe under the Great or Privy Seal, and ſhall not return within ſix months, after notice by proclamation, he ſhall forfeit, &c. &c."

OBSER-

## OBSERVATIONS

### *On* Bills of Pains and Penalties.

Where the courts of criminal judicature are equal to the trial of any offence, and can, by the ſubſiſting laws, inflict a puniſhment adequate to the crime, the ſame Obſervations are applicable to Bills of Pains and Penalties, as to Bills of Attainder, viz. That recourſe ſhould never be had to extraordinary modes of proceeding.—But if the crime is of a nature and magnitude deſerving a puniſhment, in the particular caſe, far beyond what has by the law been deemed ſufficient in ſimilar but leſs atrocious miſdemeanors;—or if the rules of admitting evidence, or other forms, to which the Judges in a court of law are bound to adhere, would preclude the execution of juſtice upon offenders, whoſe impriſonment or baniſhment from the country were become a neceſſary ſacrifice to the order and well-being of the public at large;—it has been held *, even in the beſt times of this government, that ſuch circumſtances would reaſonably juſtify a departure from the common forms of proceeding, and would entitle the Legiſlature itſelf to take cognizance of the caſe; and, by a Bill of Pains and Penalties, to avenge the miſchief offered to the State; thereby to hold out an example which might prevent ſimilar offences in future.

* See the Acts 10 and 11 William III. ch. 13.—1 Queen Anne, ſtat. 1. ch. 29.—1 Geo. I. ch. 7.—for continuing the impriſonment, during the pleaſure of the Crown, of ſeveral perſons, for a conſpiracy to aſſaſſinate King William.—The ſeveral proceedings againſt theſe perſons are inſerted in the 3d chapter of this Volume (under title, "*Bills "of Pains and Penalties,*" N° 10 and 11.)—See alſo in the ſame chapter, the caſes of Plunkett and Kelly, and of Biſhop Atterbury, in the year 1723.

# IMPEACHMENT.

## CHAPTER THE SECOND;

*From the Acceſſion of James* I. *to the Revolution.*

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I. *What are ſufficient Grounds of Accuſation.*
II. *Proceedings previous to carrying up the Charge.*
III. *Form of delivering the Charge.*
IV. *Proceedings in either Houſe between delivering the Charge and the Trial.*
V. *Proceedings on the Trial.*
VI. *Commons demand Judgment.*
VII. *Bills of Attainder.*
VIII. *Bills of Pains and Penalties.*

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THE commencement of the Proceedings, upon the ſeveral caſes of Impeachment, which occur during this period, from the acceſſion of James I. to the Revolution, being claſſed partly under the firſt title, " What are ſufficient Grounds of Accuſation," and partly under the next head, " Proceedings in the Houſe of " Commons previous to carrying up the Charge," it has been thought proper, for the conveniency of thoſe who may wiſh to conſult this Work, to prefix a table of the names of the perſons againſt whom theſe proceedings were directed, with a reference to the pages in this Volume, where the Caſes are to be found:—

1. Sir

1. Sir Giles Mompeſſon, 1620—for having procured illegal Patents, &c. p. 99. and 120.
2. Lord Chancellor Bacon, 1620—for Corruption in his Office, p. 100.
3. Sir John Bennet, 1621—for Corruption as a Maſter in Chancery, p. 120.
4. Sir Lionel Cranfield, Earl of Middleſex, Lord Treaſurer, 1624—for taking Bribes, p. 121.
5. Biſhop of Norwich, 1624—for Extortion and Malverſation in his Dioceſe, p. 121.
6. Duke of Buckingham, 1626—for a variety of Offences in his Adminiſtration, p. 103. and 123.
7. Montague, 1626—for publiſhing Books, contrary to the thirty-nine Articles, and tending to Sedition, p. 122.
8. Earl of Briſtol, 1626—King's Charge againſt him, for behaviour, whilſt Ambaſſador in Spain, p. 100.
9. Mainwaring, 1628—for Matter contained in Sermons, p. 124.
10. Mr. Mohun, 1628—for Miſconduct as Deputy Warden of the Stannaries, p. 126.
11. Earl of Strafford, 1640—for Treaſon, and High Crimes and Miſdemeanors, p. 127.
12. Judges, 1640—for their Conduct in the caſe of Ship-money, p. 127. and 132.
13. Archbiſhop Laud, 1640—for endeavouring to ſubvert the Laws of the Realm and of Religion, p. 128.
14. Biſhop of Ely, Matthew Wren, 1640, p. 129.
15. The Lord Keeper Finch, 1640—for High Treaſon and other great Miſdemeanors, p. 129. and 131.
16. Sir George Radcliffe, 1640—for High Treaſon, p. 130.
17. Dr. Coſins, 1640—p. 132.
18. Daniel Oneale, 1641—for High Treaſon, p. 104.
19. The Biſhops, 1641—Makers of new Canons and Oath, p. 133.

20. Mr.

20. Mr. Jermyn, Piercy, and others, 1641—for High Treaſon, p. 134.
21. Accuſation againſt the Lord Kimbolton, and five Members of the Houſe of Commons, 1641, by the King's command—for High Treaſon, p. 104.
22. Drake, 1660—for writing a Book, intituled, "The Long Parliament revived," p. 135.
23. Lord Mordaunt, 1666—for diſpoſſeſſing Mr. Tayleur of Apartments at Windſor, and impriſoning him, p. 110. and 136.
24. Earl of Clarendon, 1667—for High Crimes and Miſdemeanors, p. 112. and 136.
25. Commiſſioner Pett, 1667—for Miſdemeanors, as a Commiſſioner of the Navy, p. 112.
26. Lord Chief Juſtice Keeling, 1667—for illegal and arbitrary Proceedings as a Judge, p. 113.
27. Sir William Penn, 1668—for embezzling Prize Goods, p. 114.
28. Mr. Brunckard, 1668—for Miſdemeanors in the Sea Engagement in 1665, p. 114.
29. Earl of Orrery, 1669—for High Treaſon and other High Miſdemeanors, p. 138.
30. Earl of Arlington, 1673—for Treaſonable and other Miſdemeanors, p. 138.
31. Earl of Danby, 1675—for Miſdemeanors in the Office of Lord High Treaſurer, p. 140.
32. Lord Arundel, Lord Stafford, and the Popiſh Lords, 1678—for being concerned in the Popiſh Plot, p. 140.
33. Earl of Danby, 1678—upon his Letters to Mr. Montagu, Ambaſſador at Paris, p. 115. and 142.
34. Richard Thompſon, Clerk, 1680—for preaching Sedition, p. 118.
35. Edward Seymour, Eſq. 1680—for his Conduct as Treaſurer of the Navy, p. 143.

36. Lord Chief Juſtice North, 1680—for adviſing the Proclamation againſt tumultuous Petitions, p. 115.
37. Lord Chief Juſtice Scroggs, Mr. Juſtice Jones, and Mr. Baron Weſton, 1680—for High Treaſon and other High Crimes and Miſdemeanors, p. 116. and 144.
38. Earl of Tyrone, 1680—for High Treaſon, p. 118.
39. Edward Fitzharris, 1681—for High Treaſon, p. 119.



I. *What*

## I. *What are ſufficient Grounds of Accuſation.*

1. SEVERAL matters of accuſation having been alleged and proved, at the Committee of Grievances, againſt Sir Giles Mompeſſon, for having procured illegal patents, &c *. and theſe being reported to the Houſe, there is much debate, on the 27th of February, 1620, in what manner he ought to be proceeded againſt criminally, and how puniſhed.—A Committee is appointed to ſearch Precedents, and to report what is fit to be done.—On the 28th of February, Sir E. Coke reports the Precedents; and the Houſe reſolve, "That, for the puniſhment of Sir Giles Mom-"peſſon, the Houſe ſhould go to the Lords †." But in order that

* In the courſe of this proceeding, ſeveral matters came out againſt Sir Francis Michell, which ſee on 5th and 10th March, 1620. On the 4th of May, 1621, the Lords ſend word, They are ready to give judgment againſt Sir Francis Michell; and they deſire the Speaker and the Houſe will preſently come up and demand judgment.

† In the 1ſt Vol. of Parliamentary Proceedings, in 1620-1, p, 109, it is expreſſed thus, "The opinion of the Committee is, That we "muſt join with the Lords for the puniſhing of "Sir Giles Mompeſſon, it being no offence "againſt our particular Houſe, or any Mem-"ber of it, but a general grievance."—In an inſtance that occurred very ſoon after this, the Houſe, departing from this mode of proceeding, found themſelves under great difficulties. For, on the 1ſt of May, 1621, the Commons having paſſed a very ſevere judgment againſt one Floyd, for ſpeaking diſreſpectfully of the King and Queen of Bohemia, the King ſent a meſſage to them, on the 2d of May, expreſſing doubts of the authority of the Commons to exerciſe juriſdiction in this caſe, and to ſentence one, "who was no Member, nor offender "againſt the Houſe, or any Member of it."—The King at the ſame time tranſmitted a record of the 1ſt Henry IV. as a Precedent againſt their having any ſuch juriſdiction.—See the Debate upon this meſſage in the Parliamentary Proceedings, 1620-1, Vol. II. p. 5, particularly the ſpeeches of Mr. Noy and Sir Edward Coke. The record ſent by the King, is in the Rot. Parl. Vol. III. p. 427, N° 79. "Les "Communes monſtrerent au Roi, q̃ come les "jùggementz du Parlement appartiegnent "ſeulement au Roi & as Seigñrs, et nient as "Communes, ſinon en Cas q̃ s'il pleſt au "Roi de ſa grace eſpeciale leur monſtrer les "ditz juggementz, pur eaſe de eux, q̃ nul Re-"cord ſoit fait en Parlement encontre les ditz "Communes q'ils ſont ou ſerront Parties as "aſcunes juggementz donez ou a doners en "apres en Parlement.—A quoi leur feuſt re-"ſponduz par l'Erceveſq̃ de Canterbirs, de "Com-

that he may be forthcoming, he is committed to the cuſtody of the Serjeant at Arms*.

2. On the 15th and 17th of March, 1620, ſee the commencement of the Proceedings againſt the Lord Chancellor Bacon, which originated from a report from the Grand Committee of Courts of Juſtice †.

3. A very extraordinary proceeding took place in the Houſe of Lords, upon a meſſage from Charles the Iſt, on the 21ſt of April, 1626 ‡, charging the Earl of Briſtol with ſeveral offences committed whilſt he was Ambaſſador in Spain;—and for ſcandalizing the Duke of Buckingham, and, by reflection, the King himſelf.—The Lords making ſome difficulty about committing the Earl of Briſtol upon this charge; the Lord Keeper, on the firſt of May, delivered another meſſage from the King, acquainting them, "That his Ma-"jeſty had commanded the Attorney General to charge the "Earl of Briſtol before the Lords with High Treaſon, and with "other offences and miſdemeanors of a very high nature, and then

"Commandement du Roi, Coment meſmes "les Communes ſont Petitioners & deman-"dours, et q̃ le Roi et les Seigñrs de tout "temps ont eues, & averont de droit, les "Juggementz en Parlement, en manere come "meſmes les Communes ount monſtrez.— "Sauve q'en Eſtatutes a faires, ou en Grantes "et Subſides, ou tiels Choſes a faires, pour "commune Profit du Roialme, le Roi voet "avoir eſpecialement leur advis & aſſent."

* Having eſcaped out of the Serjeant's cuſtody, and this being ſignified to the Lords at a Conference, the Lords iſſue orders to the Warden of the Cinque Ports, and all the great officers, to apprehend him.—And on the 3d of March, having by this flight acknowledged his guilt, he is expelled the Houſe of Commons

† Theſe proceedings, both in the Houſe of Commons and the Houſe of Lords, are collected together, and publiſhed in the firſt volume of the State Trials. Lord Bacon, whilſt the proceeding was depending before the Lords, wrote a letter of ſubmiſſion, in which he expreſſed himſelf, as follows, "I do "ingenuouſly confeſs and acknowledge, that, "having underſtood the particulars of the "charge, not formally from the Houſe, but "enough to inform my conſcience and me-"mory, I find matter ſufficient and full, both to "move me to deſert the defence, and to move "your Lordſhips to condemn and cenſure "me."—State Trials, Vol. I. p. 360.

‡ Though this caſe does not properly come within this Title, there ariſe in it ſo many curious queſtions relating to the Juriſdiction of the Lords, the admiſſion of evidence, &c. &c. that I have taken the liberty to inſert it here.

"to

"to proceed in a legal courſe againſt him according to juſtice, "and the uſual proceedings of Parliament*"—The Lords, upon a motion

* King Charles the Firſt took a violent and moſt indecent part againſt the Earl of Briſtol, throughout the whole of theſe proceedings.—On the 21ſt of April, 1626, he ſends a meſſage to the Lords, ſignifying his Royal pleaſure, That the Earl of Briſtol ſhould be ſent for as a delinquent, to anſwer to the Houſe for the offences which his Majeſty will cauſe to be charged againſt him.—The Lords heſitating about the manner of complying with the King's requeſt, after conſideration in the Committee of Privileges, order the Earl to be brought before them by the Gentleman Uſher.—On the 29th of April, the Committee of Privileges report ſeveral inſtances of Lords accuſed, who were not committed to ward till after judgment.—On the 6th of May, after the articles charged upon Lord Briſtol by the Attorney General had been read, he deſires to know, of Mr. Attorney, his relator, that he might underſtand who is his accuſer:—to which, the Attorney anſwers, "That the "King himſelf, out of his own mouth, had "given him directions for his relation againſt "the Earl, and had corrected many things "which were added."—The Lords then order a copy of the King's charge to be given to Lord Briſtol, and that he ſhould have Counſel to plead his cauſe.—On the 8th of May, the King ſends a meſſage by the Lord Keeper, "That his Majeſty, underſtanding "that the not uſing Counſel for a defendant, "in caſes of treaſon and felony, is an ancient "and fundamental law of the kingdom, there-"fore deſires, that, foraſmuch as he has com-"mitted this cauſe to the honour and juſtice "of the Lords, they would proceed with all "caution, that the ancient and fundamental "law may receive no prejudice or blemiſh,"—The Earl of Briſtol then preſented a petition to the Lords, ſtating, "That whereas it ap-"pears by the title of the charge exhibited "againſt him, that he is to anſwer before his "Majeſty and the Peers, and *that hereby his "Majeſty is his Judge.*—And by Mr. Attor-"ney's confeſſion, this charge is by his Ma-"jeſty's relation, and *ſo his Majeſty is his "accuſer.*—And that ſeveral parts of the "charge are grounded only upon private "Conferences with his Majeſty—*ſo that his "Majeſty by his teſtimony becomes a witneſs.*—"And in caſe he the ſaid Earl ſhould be con-"victed, *his confiſcation cometh to the Crown.*—"He ſubmits to the Lords, upon all theſe "conſiderations, of what conſequence ſuch a "precedent will be."

On the 9th of May, the Lords propoſe to the Judges two queſtions, (1.) Whether in Treaſon or Felony the King's teſtimony can be admitted or not? (2.) Whether words ſpoken to the Prince, who is afterwards King, makes any alteration in the caſe? On the 13th of May, the Judges being called upon to deliver their opinions, the Lord Chief Juſtice acquaints the Lords, That they had received his Majeſty's pleaſure by the Attorney General, that, for certain reaſons which were expreſſed by the Attorney, the Judges ſhould forbear giving any anſwer to the queſtions put to them.

On the 15th of May, the Lords return an anſwer to the King's meſſage of the 8th, about diſallowing Counſel to the Earl of Briſtol, "That they conceive their order upon this "occaſion did not prejudice any fundamental "law of the Realm."—And, "that in the "21ſt year of Jac. I. a general order was "made (which ſee hereafter, in this Volume,) "touching allowing Counſel to delinquents "queſtioned in Parliament; at voting which, "his Majeſty, being then Prince, was preſent; "—which order extends further than this or-"der about the Earl of Briſtol."—The King replies, on the 17th, "That, having adviſed

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a motion made, " That the ſaid Earl might be committed, and in-
" dicted preſently," directed the Judges to withdraw, to conſult Precedents, and to conſider of the forms of proceedings in other courts in matters of this nature:—who, being returned, " deſired to be
" excuſed to deliver any opinion of the Precedents of Parliamen-
" tary Proceedings, for that of them the Lords only are the
" Judges."—They ſtate, however, what the manner of the proceeding is in the Courts below; and they report a ſecond way of proceeding againſt parties accuſed of Treaſon, viz. by Bill of Attainder in Parliament, which is to paſs both Houſes.—But how the proceedings in this caſe ought to be, they leave to their Lordſhips determination.—The Houſe not being ſatisfied herewith, touching the commitment of a Peer of the Realm upon a bare accuſation, remand the Earl of Briſtol to the houſe of the Gentleman Uſher.—On the 2d of May, a motion is made, That the Earl of Briſtol might be indicted, according to the Statute 35th of Henry VIII. for offences committed beyond the ſeas, and, that being certified into the Houſe of Lords, then to proceed againſt him by trial of his Peers.—But this not being approved of, the Committee of Pri-

" of the meſſage which your Lordſhips ſent
" yeſterday, and having taken into conſidera-
" tion, that himſelf hath commended this
" cauſe to your honour and juſtice; although
" his Majeſty knows that, by the fundamental
" laws of the Realm, or cuſtom and uſe of
" Parliament, Counſel is not to be allowed to
" a perſon accuſed of High Treaſon; yet,
" ſince his Majeſty may, at his own pleaſure,
" deſcend between his own right and prero-
" gative; and that it may appear to all the
" world, that his Majeſty, in his gracious
" goodneſs, is pleaſed to afford the Earl of
" Briſtol all ways of defence, in a more ample
" manner than is due to him by law, he is
" content, and doth hereby give full licence,
" that in this particular caſe, the Earl of
" Briſtol may have Counſel both to adviſe
" him, and to ſpeak and plead for him."

Whoever will compare this abſtract of theſe Proceedings, with the conduct of the ſame Monarch, in the caſe of the Earl of Arundel, (which occurred about the ſame time, and which is to be found in the 1ſt Vol. of this Work, p. 141.) will find marks of the ſame diſpoſition, arbitrary in principle, high and imperious in language, yet in the end unperſevering and ſubmiſſive.—An unfortunate diſpoſition! which, in the Parliament that met in November, 1640, very juſtly provoked an oppoſition to the illegal meaſures of the King's government; but which afterwards, in the courſe of that Parliament, too fatally encouraged and promoted the deſigns of thoſe independents, whoſe object had been from the beginning to deſtroy the Monarchy, and to overturn the eſtabliſhed forms of the conſtitution both in Church and State.

vileges are ordered to ſearch Precedents: and on the 4th of May, the Earl of Devonſhire reports, that they had found one, which gave them full ſatisfaction, touching the trial of a Peer in Parliament, viz. the trial of the Earl of Northumberland, the 5th of Henry IV *.—The Houſe being ſatisfied with this Precedent, order the Attorney General to prepare the heads of the charge againſt the Earl of Briſtol.—That the Earl ſhall receive the charge at the Bar, and the cauſe to be retained wholly in the Houſe of Lords.

4. On the 21ſt of April, 1626, Mr. Glanvylle, from the Select Committee appointed to conſider of the charges againſt the Duke of Buckingham, reports, That they deſire the Houſe will reſolve, "Whether common fame is a ground for this Houſe to proceed "upon †."—It is reſolved to conſider this the next day, and Precedents to be produced—After a long debate ‡, on the 22d of April,

* See this proceeding in the Rot. Parl. 5th Henry IV. N° 11 and 12, Vol. III. p. 524—where it will appear, That the Earl of Northumberland appeared before the King, Lords, *and Commons* in Parliament.—That the Earl returned his thanks to the King, Lords, *and "Commons,"* for the ſhare they took in the proceeding.—This caſe, therefore, though the judgment was only by the King and Lords, was no precedent to juſtify the mode of proceeding adopted by the King, againſt the Earl of Briſtol.

† It ſhould ſeem from what Bracton ſays, in the 3d Book, ch. 22. "De Corona," as if common fame, "ſi oriatur apud bonos et "graves" were a ground for an indictment at the Common Law.

*Bracton de Legibus, p.* 143.

‡ See the heads of this debate in the Parliamentary Hiſtory, Vol. VI. p. 435, and in the Journal of the 22d of April, particularly Mr. Selden's ſpeech, in which he ſays, "Theſe "caſes are to be ruled by the law of Parlia- "ment, and not either by the common or "civil law."—Mr. Littleton ſays, "This is "not a Houſe for definitive judgment, but of "information, denunciation, or preſentment, "for which common fame is ſufficient."—Mr. Noy ſays, "There are two queſtions, 1. Whe- "ther a common fame? 2dly, Whether "this fame be true?—We will not tranſmit "without the firſt enquiry; but without the "ſecond, we may; for peradventure we can- "not come by the witneſſes; as if the wit- "neſſes be of the Lords Houſe."—So, in the Report of a Free Conference, on the 27th of February, 1702, it is ſaid, "There is this "difference between a reſolution of the Com- "mons, and that of the Lords; The vote of "the Houſe of Commons is but in order to a "proſecution; which they cannot vote, with- "out declaring the crime; and they can "never come to be judges of it.—The Houſe "of Commons is the grand inqueſt of the na- "tion;

April, the Houſe reſolve, "That common fame is a good ground "of proceeding of this Houſe, either to enquire of here, or tranſmit "the complaint, if the Houſe find cauſe, to the King or Lords."

5. On the 17th of December, 1641, the Houſe reſolve, That they will proceed againſt Daniel Oneile by way of accuſation and impeachment, for "High Treaſon." The accuſation and impeachment are read, and re-committed to the ſame Committee, to prepare it, in ſuch a way, as that all the evidence may be brought in.

6. The following caſe is, like the preceding one (N° 3.) not an Impeachment by the Commons, but an accuſation on the part of the King, by the Attorney General, before the Lords, of certain perſons for High Treaſon and other high miſdemeanors *. On the 3d of January, 1641, the Attorney General, Sir Edward Herbert, informs the Lords, That the King had commanded him to tell their Lordſhips, that divers great and treaſonable deſigns and practices, againſt his Majeſty and the State, had come to his Majeſty's knowledge; for which the King had given him command, in his name, to accuſe, and he accordingly did accuſe ſix perſons of High Treaſon and other high miſdemeanors; and he delivered the articles in writing, which he had in his hand, and which he received from his Majeſty, in which articles the perſons names and the heads of the treaſons were contained.—The articles are then read, purporting to be "Articles of High Treaſon and other high miſdemeanors, againſt

"tion; and every Grand Jury, that finds "*billa vera* on an indictment, does by that "declare the man guilty: But the Lords "have a judicial capacity; and their reſolu-"tion, before an accuſation brought, is pre-"judging the cauſe, that may come regularly "before them." See before, Vol. III. p. 476.

* The proceedings upon this caſe go into a period beyond the 4th of January, 1641, and therefore beyond that limit which is preſcribed in this compilation; but, as they contain much curious hiſtory, tending to illuſtrate the character of Charles the Firſt, they are here inſerted.

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" the Lord Kimbolton *, Mr. Denzil Holles, Sir Arthur Haſelrig, " Mr. John Pym, Mr. John Hampden, and Mr. William Strode." There were ſeven articles of charge.—Mr. Attorney then, from his Majeſty, deſired, 1. That a Select Committee of Lords might be appointed to take the examination of witneſſes, and that this might be a Committee of Secrecy. 2. That he might be at liberty to add or alter, if he ſhall ſee cauſe, according to juſtice. 3. That their Lordſhips would take care for the ſecuring of their perſons, as in juſtice there ſhould be cauſe.—The Houſe refer all this matter to a Committee of the whole Houſe, to conſider, 1. Whether this accuſation of Mr. Attorney General be a regular proceeding according to law. 2. Whether there were any ſuch proceedings ever before, as in this caſe. 3. Whether an accuſation of Treaſon may be brought into this Houſe, by the King's Attorney, againſt a Peer in

* This Lord Kimbolton was the eldeſt ſon of the Earl of Mancheſter, and had, ſome years before, been called up to the Houſe of Lords, by Charles the Firſt. He had, after this period, a conſiderable ſhare in the conduct of affairs, as General of the Parliament forces, during the civil war. See Lord Clarendon's character of him, Hiſtory of the Rebellion, Vol. II. p. 160, and the charge made againſt him by Cromwell, in 1644, with his anſwer in vindication of his conduct.—Ruſhworth's Collections, Vol. V. p. 732, 733. " Having " gone a certain length," (Lord Clarendon obſerves) " he was at laſt diſmiſſed, and re- " moved from any truſt, for no other reaſon, " but becauſe he was not wicked enough." Sir William Waller and the Earl of Eſſex both ſhared the ſame fate, and for the ſame cauſe. —See Sir William Waller's Apology, publiſhed in 1793.——Hume, in his Hiſtory of Charles the Firſt, gives a very curious and entertaining account of the riſe and character of the Independents; who, in the year 1644, began to ſeparate themſelves from the Preſbyterian party, and to avow principles leading to a total abolition of the Monarchy and even of the Ariſtocracy; and to project an entire equality of rank and order, in a Republic, quite free and independent. Principles, by no means agreeable to the then leaders in Government, to the Earls of Mancheſter, Eſſex, and Northumberland, to Sir William Waller, Mr. Holles, Whitelocke, Maynard, and Glynn. The leaders of theſe Independents were, Sir Harry Vane, Oliver Cromwell, Nathaniel Fiennes, and Oliver St. John, the Solicitor General. Mr. Hume ſays, " That at this time, a con- " ſiderable majority in the Parliament, and a " much greater in the nation, were attached " to the Preſbyterian party; and that it was " only by cunning and deceit at firſt, and af- " terwards by violence, that the Indepen- " dents could entertain any hopes of ſucceſs. " Cromwell, notwithſtanding his habits of pro- " found hypocriſy, could not help betraying " his favourite notions of equality, by ſaying, " in a diſcourſe with the Earl of Mancheſter, " —My Lord, it never will be well with Eng- " land, till you are Mr. Montagu, and there " ſhall be never a Lord or Peer in the king- " dom." *Hume's Hiſtory of England, Vol.* V. *ch.* 8.

Parliament. 4. Whether any perſon ought to be committed to cuſtody upon a general accuſation from the King or the Houſe of Commons, before it be reduced into particulars. And a Select Committee was appointed to peruſe and conſider of Precedents and Records concerning theſe particulars.—On the next day, the 4th of January (the fatal day, on which Charles I. went in perſon to the Houſe of Commons *, to ſeize the five Members that he had the day before accuſed in the Houſe of Lords) the Commons, in a Conference, complain to the Lords of a ſcandalous paper they had met with, containing articles of High Treaſon, &c. againſt the Lord Kimbolton, and five Members of the Houſe of Commons; and they deſire their Lordſhips would join with them, to find out the authors, and to bring them to condign puniſhment for ſo high a breach of

* The following very curious account of this tranſaction is tranſcribed from ſome minutes, taken at the time *in pencil*, by Sir Edmund Verney, Knight Marſhal, who afterwards bore the King's ſtandard at the battle of Edgehill, and was killed in that action. "On Tueſday, the 4th January, 1641, when "the Houſe met after their adjournment till "one o'clock, 'twas moved (conſidering there "was an intention to take the five Members "by force) to avoid all tumult, "That they "be commanded to abſent themſelves," but "entered no orders for it, and then the five "Gentlemen went out of the Houſe; a little "after the King came with all his guards "and all his penſioners, and two or three hundred ſoldiers and gentlemen. He commanded all the ſoldiers to ſtay in the Hall, "and ſent us word, he was at the door. The "Speaker was commanded to ſit ſtill, with "the mace laying before him; then the King "came to the door and took the Palſgrave in "with him, and commanded all that came "with him, upon their lives, not to come in; "ſo the doors were kept open; and the Earl "of Roxborough ſtood within the door, leaning upon it. Then the King came upwards "towards the Chair with his hat off, and the "Speaker ſtept out to meet him; when the "King ſtept up to his place, and ſtood upon "the ſtep, but ſat not down in the Chair. "Then he ſaid, "He expected obedience to "his meſſage of yeſterday, and not an anſwer." On the Speaker's ſaying, "That he "had neither eyes or tongue, to ſee or ſay any "thing but what the Houſe commanded him," "the King ſaid, "He thought his own eyes "as good as his, but that the birds were "flown; but he expected, that the Houſe "would ſend them to him, for their treaſon "was foul, and ſuch a one as we ſhould all "thank him to diſcover," and ſo went out, "putting off his hat, till he came to the door. "Upon this the Houſe reſolved to adjourn "immediately to to-morrow, at one o'clock, "and conſider what was to be done."

Theſe minutes, taken at the time *in pencil*, were found amongſt the papers of the late Earl Verney, written by his anceſtor, Sir Edmund Verney; and, though at ſo diſtant a period, were plain enough to be legible.—Compare this with Ruſhworth's account of the ſame tranſaction, in the Appendix to the 1ſt Vol. of this work, N° 4.

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the privileges of Parliament.—On the 11th of January, the Attorney General being called upon by the Lords, at the deſire of the Lord Kimbolton, to know when he would be ready to proſecute his accuſation, declared, " That what he had done, was by the expreſs " command of the King his Maſter, and not done by his advice; " and that he had received no further directions."—On the 12th of January, Mr. Attorney makes a further narrative of what he did the day he charged the ſix perſons, and ſhewed that he did it merely by directions from the King; and deſired time to prepare himſelf to ſhew, That what he did in charging them with High Treaſon was in a legal and warrantable proceeding, agreeable to the courſe of Parliaments, and fit for him to do as the King's Attorney.—The Lords give him till the next day.—On that day, the 13th of January, the Lord Keeper delivers a meſſage from the King, which his Majeſty had commanded him to give to both Houſes, " That his Ma- " jeſty taking notice, that ſome conceive it diſputable whether this " proceeding againſt the Lord Kimbolton, and the five Members of " the Houſe of Commons, be legal, and agreeable to the privileges " of Parliament, and being very deſirous to give ſatisfaction to all " men, in all matters that may ſeem to have relation to privi- " lege;—his Majeſty is pleaſed to wave his former proceedings; " and, all doubts by this means being ſettled, when the minds of " men are compoſed, his Majeſty will proceed thereupon in an un- " queſtionable way; and aſſures his Parliament, that, upon all occa- " ſions *, he will be as careful of their privileges, as of his life " and his crown." This anſwer of the King's is immediately communicated to the Houſe of Commons: and then the Attorney General, having again endeavoured to exculpate himſelf, as having had

* The articles were, by his Majeſty's command, delivered in the Houſe of Lords on the 3d of January. On the 4th of January, the King went in perſon into the Houſe of Commons, for the purpoſe of ſeizing by force five of their Members. And on the 13th of January, he declares to both Houſes, " That, " upon all occaſions, he will be as careful of " their privileges, as of his life and his " crown."

nothing to do, either with the matter of the charge, or the framing of the articles, and that he delivered them only in obedience to the King's command, inſiſted upon the legality of the proceeding, and grounded his juſtification on the proceedings of the King's Attorney in the Earl of Briſtol's caſe *, 1ſt and 2d of Charles I. —The Houſe of Commons demand a Conference with the Lords upon this ſubject, and that the Attorney General ſhould be preſent, and be required to anſwer ſuch queſtions as ſhould be put to him †. —On the 14th of January, the King ſends a further meſſage upon this ſubject, in addition to what he had ſaid before, "His Majeſty, "being no leſs tender of the Privileges of Parliament, and thinking "himſelf no leſs concerned, that they be not broken, and that they "be aſſerted and vindicated, whenſoever thay are ſo, than the Par- "liament itſelf, hath thought fit to add to his laſt meſſage this pro- "feſſion, That in all his proceedings againſt the Lord Kimbolton, "and the five Members, he had never the leaſt intention of violat- "ing the leaſt privilege of Parliament—and in caſe any doubt of "privileges remain, he will be willing to clear that, and aſſert thoſe "by any reaſonable way, that the Parliament ſhall adviſe him to."— He then hopes the Parliament will lay by their jealouſies, and apply themſelves to the public buſineſs.—Notwithſtanding theſe repeated meſſages, the Lords, on the 15th of January, concur with the Commons in reſolving, "That this impeachment, and the proceedings "thereupon, is a high breach of the privileges of Parliament," and they appoint a Committee to meet a Committee of the Commons, to

* See this caſe before in pages 100, 101, and 102.

† See the queſtions intended to be put, in the Commons Journal of the 13th of January; and the report of the Conference, with the Attorney's anſwers, on the 15th of January: —after which, the Houſe of Commons reſolve, to conſider of ſome way for charging Mr. Attorney by this Houſe as criminous, for exhibiting thoſe articles in the Lords Houſe againſt Members of this Houſe, without any information or proof, that appears; and that this Houſe, and the Gentlemen charged by him, may have reparation from him, and that he may be put in ſecurity to ſtand the judgment of Parliament,—And the Houſe then reſolves, "That this act of Mr. Attorney's is illegal, "and a high crime."—Theſe votes were ordered to be communicated to the Lords, and a Committee is appointed to prepare a charge againſt him.

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conſider in what manner this may be vindicated; and of a petition to his Majeſty upon this ſubject.—This petition, which is in the Lords Journal of the 20th of January, deſires, amongſt other things, "That "his Majeſty would, before Tueſday next, inform the two Houſes "of Parliament, what proof there is againſt the ſix Members, that "accordingly there may be a legal and Parliamentary proceeding "againſt them, and they receive, what in juſtice ſhall be their due, "either for their acquittal or condemnation." The King returns an anſwer on Monday the 24th of January, "That he thinks it "unuſual and unfit to diſcover what proof there is againſt them; "and therefore holds it neceſſary, that it be reſolved, Whether his "Majeſty be bound, in reſpect of privilege, to proceed againſt them "by impeachment in Parliament? or, Whether he be at liberty to "prefer an indictment at the common law, in the uſual way; or "have his choice of either? Whereupon his Majeſty will give ſuch "ſpeedy direction for the proſecution, as ſhall ſhew his Majeſty's "deſire to ſatisfy both Houſes, and to put a determination to this "buſineſs."—On the 1ſt of February, the two Houſes renew their application to the King by petition, deſiring, "That the Parliament "may be informed, before Friday next, the 4th of February, what "proofs there are againſt the ſix Members, that accordingly they "may be called to a legal trial; it being the undoubted right and "privilege of Parliament, that no Member of Parliament can be "proceeded againſt without the conſent of Parliament."—On the 5th of February, Lord Newport informs the Lords, that the King will ſpeedily return an anſwer to their petition.—Accordingly, on the 7th of February, the King writes a letter to the Lord Keeper, incloſing the following paper, with directions that it ſhould be read in Parliament:—"To the petition concerning the Members of either "Houſe, his Majeſty returns this anſwer;—That, as he once con-"ceived that he had ground enough to accuſe them, ſo now his "Majeſty finds as good cauſe, wholly to deſert any further proſecu-"tion of them."—On the 17th of February, both Houſes join in a

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further petition to the King, to know*, "Who the perſons were "that made the ſuggeſtions or informations to his Majeſty againſt "the ſaid Members, that ſo the rights and privileges of Parliament "may be vindicated."—To which the King, on the 21ſt, deſires further time to conſider of his anſwer †.

7. On the 18th of December, 1666, on a report upon a petition of Mr. Tayleur, which had been referred to the Committee of Grievances to be examined, ſtating, That Mr. Tayleur had, upon an order from the King to Lord Mordaunt ‡ to clear the lodgings belonging

* It appears from Lord Clarendon, that this meaſure of the King's coming in perſon to the Houſe of Commons, to ſeize the five Members, was adviſed by the Lord Digby, and that no other perſon was conſulted with, on this very important ſtep. Hiſtory of the Rebellion, Vol. I. p. 282, Book iv. See in the "Memoires pour "ſervir a l' Hiſtoire d' Anne d' Autriche," Vol. I. p. 265, a very curious account of this tranſaction, which the Queen, Henrietta Maria, makes to Madame de Motteville, the author of that Work.—The Queen had communicated the ſecret of the King's intentions to Lady Carliſle, who gave notice of it to the parties concerned time enough for them to eſcape out of the Houſe of Commons.—"La Reine, qui, "en cet endroit, avoit fait une faute notable, "en me contant ſa légéreté, ſe condamna "ellememe; mais, ce qui eſt admirable, "quoiqu'elle l'eut avouée au Roi, je n'ai "point remarqué qu'il l'en eût moins bien "traitée. Elle en a fait pénitence par ſon "repentir, & point du tout par aucun re-"proche que ce Prince lui en ait fait."

† Thus ended this extraordinary tranſaction, on the part of the King; but on the 12th of February, the Houſe of Commons find articles of impeachment againſt Sir Edward Herbert, Knight, for high crimes and miſdemeanors; which are carried up to the Lords on the 14th.—The Attorney General is called in to hear the charge, has time given him to prepare his anſwer, and puts in ſecurity for 5000*l.* for his appearance.—On the 22d of February, the Attorney puts in his anſwer at the Lords, in the preſence of a Committee of the Houſe of Commons; the ſubſtance of which anſwer is, "That, in whatever he "had done, he had acted by the King's "expreſs commands."—On the ſame day a Bill is ordered, upon a diviſion of 65 to 48, to be brought into the Houſe of Commons againſt him—which is read 1° on the 24th of February, and then dropped.—It is intituled, "A Bill for the exemplary puniſhment of Sir "Edward Herbert, Knight, his Majeſty's At-"torney General, for exhibiting falſe and "ſcandalous articles of High Treaſon againſt "the Lord Kimbolton, and five Members of "this Houſe, in the Houſe of Peers."

‡ This John Lord Mordaunt was a younger ſon of an Earl of Peterborough, and had been very active, as appears from Lord Clarendon's account of him, in bringing about the reſtoration; for which ſervices he was created by Charles the IId. Viſcount Avalon, Baron Mordaunt; but in all the proceedings againſt him, and in the Lords Journal, whenever his name is mentioned, it is by the title of Viſcount Mordaunt. (Avalon was an antient name for Glaſtonbury,

belonging to the Chancellor of the Garter, in Windſor Caſtle, been turned out, in March, 1660, by ſoldiers of that garriſon; and had been twice impriſoned by the Lord Mordaunt—the Houſe reſolve that ſuch diſpoſſeſſion was illegal, and that the ſaid impriſonments were illegal and arbitrary—and that an impeachment be drawn up againſt the Lord Mordaunt, on thoſe votes.—A Committee is immediately appointed to draw up the impeachment *.

8. On the 25th of October, 1667, Mr. Tayleur, in a ſubſequent ſeſſion, exhibits another petition, with articles of impeachment annexed, againſt the Lord Viſcount Mordaunt †; which were read, and Mr. Tayleur was called in, and affirmed he was ready to make out the matter contained therein.—A Committee is appointed to conſider of this petition and articles, and to examine, "what new matter is in them, not contained in the articles and "petition formerly exhibited, and to ſtate what that new matter "is ‡, and the progreſs and proceedings in this buſineſs in the former "ſeſſion."—This Committee are ordered, on the 7th of December, to compare thoſe articles with the former; and on the 14th of December, they are directed to hear and examine witneſſes on behalf of

Glaſtonbury, ſo called from the quantity of *Avellana*, or Filbert-nuts, which grew in that diſtrict.) He was father to Charles Earl of Peterborough and Monmouth, who made ſo conſiderable a figure, both in civil and military affairs, in the reigns of King William and Queen Anne.

* See, under the ſubſequent heads, the further proceedings between the two Houſes, upon theſe articles.

† The proceedings upon the impeachment which aroſe out of Mr. Tayleur's complaint, in the preceding ſeſſion, were interrupted by a diſpute between the two Houſes reſpecting the manner in which Lord Mordaunt ſhould appear in the Houſe of Lords.

‡ The direction to the Committee to examine, what *new* matter is in this petition and articles, not contained in thoſe formerly exhibited, implies, that it could be only in this *new* matter, that the Houſe could be now intereſted—every thing, which was alleged in the former petition and articles, remaining in the ſtate, in which it was interrupted by the prorogation; and, as far as that complaint extended, liable to be proceeded in whenever the Commons ſhould pleaſe, without any further enquiry or examination.—In the firſt Vol. of Grey's Debates, p. 3, it is expreſsly ſtated, That it is *only* the *new* matter of the petition and articles, which was referred to the Committee.

the

the Lord Mordaunt, and all others concerned, before they make their report *.

9. On the 26th of October, 1667, a Committee is appointed to look into ancient Precedents, of the method of the proceedings of this Houſe, in caſes of impeachments for capital offences.—On the 29th of October, Mr. Vaughan reports from this Committee †, and, after reading the report, a Committee is appointed to reduce into heads the accuſation againſt the Earl of Clarendon.

10. On a report made from the Committee appointed to enquire into the miſcarriages of the late war, ſome matter appearing on the 14th of November, 1667, againſt Commiſſioner Pett, it is referred to the ſame Committee, to draw up an impeachment againſt Commiſſioner Pett, upon the whole matter before them. The articles are reported on the 28th of November, and are agreed to on the 19th of December ‡.—They are not ordered to be ingroſſed till the 23d of April, 1668; and are again read, and ſent to the Lords on the 4th of May §.

11. On

* Nothing further appears in the Journal relating to this matter; it ſhould ſeem (from what Lord Danby ſays, in his ſpeech in the Court of King's Bench on the 27th of May, 1682, which is reported in the State Trials, Vol. II. p. 744) that about this time, Lord Mordaunt was adviſed to take out a pardon from the King for theſe offences.

† This report is not entered in the Journal; but the ſubſtance of it, and the debate which it occaſioned, are to be found in Grey's Debates, Vol. I. p. 6.—Mr. Vaughan, Sir Edward Seymour, Mr. Prynne, and Serjeant Maynard, take a great part in this debate.—See in the Journal of the 6th of November, the articles of charge againſt Lord Clarendon. The proceedings at large are collected and publiſhed in the State Trials, Vol. II. p. 550.

‡ See the articles in the Journal of the 19th of December, 1667.

§ It does not appear from the Lords Journal, that they were ever carried up to the Lords.—The Commons, by the uſual proteſtation, ſave to themſelves the liberty of exhibiting any other articles, and of replying; and they pray, that Peter Pett may be called to anſwer the ſaid ſeveral crimes and miſdemeanors.—"And that ſuch further proceed-"ings may be had and uſed againſt him, as "is agreeable to law and juſtice."—But they ſay nothing about his commitment.—It appears from the Commons Journal of the 19th of December, that he had been committed by the Privy Council; and that, he having petitioned the Houſe of Commons, they had directed the Lieutenant of the Tower to acquaint

11. On the 16th of October, 1667, the Houſe being informed, "That there have been ſome innovations of late in trials of men for "their lives and deaths; and, in ſome particular caſes, reſtraints "have been put upon juries, in the inquiries"—this matter is referred to a Committee. On the 18th of November, this Committee are impowered to receive information againſt the Lord Chief Juſtice Keeling, for any other miſdemeanors, beſides thoſe concerning juries. And on the 11th of December, 1667, the Committee report ſeveral reſolutions againſt the Lord Chief Juſtice Keeling, of illegal and arbitrary proceedings in his office *.—The Chief Juſtice deſiring

quaint the Privy Council, "That this Houſe "were content he ſhould have his liberty, "on good bail, if the Council think fit."

* Theſe reſolutions are:—(1.) "That the "proceedings of the Lord Chief Juſtice, in "the caſes now reported, are innovations in "the trial of men for their lives and liberties: and that he hath uſed an arbitrary "and illegal power, which is of dangerous "conſequence to the lives and liberties of the "people of England, and tends to the introducing of an arbitrary government."

(2.) "That, in the place of judicature, the "Lord Chief Juſtice hath undervalued, vilified, and contemned *Magna Charta*, the "great preſerver of our lives, freedom, and "property."

(3.) "That he be brought to trial, in order to condign puniſhment, in ſuch manner "as the Houſe ſhall judge moſt fit and requiſite."—The Report of the facts, on which theſe reſolutions are grounded, is not entered in the Journals; but the caſes complained of, "in which innovations had been had of late," were probably thoſe of Wagſtaff, and Hood. Wagſtaff's caſe in Trin. Term, 17 Charles II. is reported in Hardres's Rep. p. 409. "Wagſtaff and others of a jury were fined an hundred marks apiece by Lord Chief Juſtice "Keeling, becauſe, though evidence was "given, that perſons had aſſembled at Conventicles, and had Bibles with them, the "jury would not find them guilty of keeping "a Conventicle, upon the late Act of the "16th Charles II. And the jury were committed till they paid their fine; and on application to the Court of Exchequer, Lord "Chief Baron Hale directed the fines to be "eſtreated." The other caſe, was in the 18th of Charles II. Kelyng's Reports, p. 50. "Hood was indicted for the murther of Neven; and upon the evidence it appeared, "that he killed him without provocation, and "thereupon I directed the jury that it was "murther: notwithſtanding they would find it "only manſlaughter; whereupon I fined the "jury five pounds apiece, and committed them "to gaol till they found ſureties to appear at "the next aſſizes. I afterwards, on the petition "of the jurors, took down their fines to forty "ſhillings apiece, which they all paid." This conduct of Chief Juſtice Keeling was grounded on the authority of Wharton's caſe, Mich. Term, 44 Eliz. reported in Yelverton's Rep. p. 23. "Wharton and others were indicted of "murther; on which indictment all the parties were found, Not Guilty; per q̄ Popham, Gaudy, and Fenner, fuerunt valde irati, "et touts les jurors comit et fine, et oblige "a lour bon behaviour."—See the caſe of Watts

ing to be heard, he is admitted on the 13th of December, and heard in his defence to the matters charged againſt him—and being withdrawn, the Houſe reſolve, "That they will proceed no farther in "the matter againſt him."

12. On the 14th of April, 1668, Sir W. Penn's name being mentioned in a report from the Commiſſioners for taking the public accounts, and he being charged with the embezzlement of prize goods —the Houſe give two days to Sir W. Penn to make his anſwer to thoſe charges, and direct the Commiſſioners of Accounts againſt that day to tranſmit to the Houſe all ſuch evidence, which they have on this ſubject relating to Sir W. Penn.—On the day appointed, the 16th of April, Sir W. Penn's anſwer, and the evidence as far as it concerned him, being read; and Sir W. Penn having been heard in his place—it is reſolved, That an impeachment be had againſt Sir W. Penn; and a Committee is appointed to prepare and draw up the impeachment*.

13. On the 21ſt of April, 1668, after much examination into the cauſes of the miſcarriage in the naval engagement with the Dutch, in 1665, the Houſe reſolve, "That Mr. Brunckard is "guilty of bringing pretended orders from the Duke of York to "Sir John Harman, commanding the lowering the ſails in the June

Watts v. Brains, in 1 Croke's Rep. p. 778, and Mr. Emlyn's notes to Hale's Plac. Cor. 2d Vol. p. 158, 161. See alſo Grey's Debates, Vol. I. p. 62, 67.—A Bill was immediately ordered in, but which did not paſs the Houſe of Commons, to declare "the fining and impriſoning of jurors "to be illegal." How far the courts of law are empowered to fine or puniſh jurors, for giving, what appears to the Court to be an improper verdict, ſee Buſhel's caſe, as reported by Lord Chief Juſtice Vaughan, Reports, p. 135. See the trial of Penn and Mead, out of which this caſe of Buſhel aroſe; with the manner in which the Recorder impoſed upon each juryman a fine of forty marks, and impriſoned them till it was paid, "for follow-"ing their own judgments and opinions, ra-"ther than the good and wholeſome advice "given them by the Court." State Trials, Vol. II. p. 606, 610.

* See the debate on the proceedings of theſe two days, in Grey's Debates, Vol. I. p. 133. et ſubſ.

"engagement,

" engagement, 1665;" and alſo, " That Mr. Brunckard be im-
" peached for this miſdemeanor." A Committee is appointed to prepare and draw up the impeachment. Theſe articles are reported on the 7th of May, and are agreed to on the 8th *.

14. On the 19th of December, 1678, upon reading two letters † from the Lord High Treaſurer Danby to Mr. Montagu, Ambaſſador at Paris, the Houſe immediately reſolve, " That there
" is ſufficient matter of impeachment againſt the Lord Treaſurer;" and they appoint a Committee to prepare and draw up the articles; and the Committee has power to ſend for perſons, papers, and records, and to receive any further information or evidence ‡.

15. On the 24th of November, 1680 §, Mr. Attorney General was called in, and examined touching the manner of iſſuing forth the Proclamation, ſtiled, " A Proclamation againſt tumultuous Pe-
" titions;" and, upon his informing the Houſe, That Sir Francis North, Chief Juſtice of the Common Pleas, was adviſing and aſſiſting in the drawing and paſſing of the ſaid Proclamation ‖.—Reſolved, nemine contradicente, " That the evidence this day given to
" this Houſe, againſt Sir Francis North, Chief Juſtice of the Court
" of Common Pleas, is a ſufficient ground for this Houſe to proceed
" upon an impeachment againſt him for high crimes and miſde-

* Theſe articles do not appear in the Journal.—See in Grey's Debates, Vol. I. p. 139 and 143, what paſſed upon this occaſion.

† See Biſhop Burnet's account of this tranſaction, in Vol. I. p. 439, et ſubſ. and the debate in Grey's Debates, Vol. VI. p. 337.

‡ The proceedings in Parliament upon this proſecution, are collected and publiſhed in the State Trials, Vol. II. p. 727.

§ This Attorney General was Sir Creſwell Leving.—There was a debate as to the manner of receiving him; and it was ordered, " That Mr. Attorney General do ſtand within
" the Bar, the Mace ſtanding by him with-
" out the Bar."—Grey's Debates, Vol. VIII. p. 61.

‖ See the ſubſtance of the Attorney General's information, in Grey's Debates, Vol. VIII. p. 61, and the debate which aroſe upon it.—It appears, that a doubt was raiſed, Whether Sir Francis North ought not to be ſent for, to be heard, before any reſolution is paſſed againſt him—which was over-ruled.—See particularly the ſpeeches of Sir William Jones and Sir Francis Winnington upon this queſtion, of the propriety of hearing him.

" meanors;" and a Committee is appointed to prepare the heads of an impeachment *.

16. On the 23d of December, 1680, Sir Richard Corbett reports from the Committee † appointed to examine the proceedings of the Judges in Weſtminſter Hall, ſeveral reſolutions:

(1.)

That the diſcharging the Grand Jury by the Court of King's Bench, in Trinity Term laſt, before they had finiſhed their preſentments, was illegal, arbitrary, and an high miſdemeanor.

(2.)

That a rule made by the Court of King's Bench, againſt printing a certain book, was illegal and arbitrary.

(3.)

That the Court of King's Bench, in the impoſition of fines on offenders of late years, hath acted arbitrarily, illegally, and partially;

* See in Roger North's Examen, Part 3d, p. 541, his account of this matter, with a copy of the Proclamation complained of, and what paſſed at the Privy Council, in the King's preſence, between the Lord Chief Juſtice North and the Attorney General, as to which of them ſhould draw the Proclamation. The object of this Proclamation was to ſuppreſs petitions to the King, that were preparing in ſeveral parts of the kingdom, deſiring him to call a Parliament; under pretence that theſe petitions " tended to promote diſcontents " among the people, and to raiſe ſedition and " rebellion." Counter addreſſes were ſet on foot by the Court party, expreſſing their abhorrence of theſe tumultuous proceedings; from whence the nation came to be divided into *Petitioners* and *Abhorrers*. Mr. Hume ſays, " Theſe terms were ſoon forgot, and " in their room were ſubſtituted the well-" known epithets of *Whig* and *Tory*. The " Court party reproached their antagoniſts " with their affinity to the fanatical conven-" ticlers in Scotland, who were known by the " name of Whigs: The Counter Party found " a reſemblance between the Courtiers, and " the Popiſh banditti in Ireland, to whom the " appellation of Tory was affixed. And after " this manner theſe fooliſh terms of reproach " came into public and general uſe; and even " at preſent ſeem not nearer their end, than " when they were firſt invented."

*Hiſtory of Charles II. ch. 6th.*

† This Committee had been appointed on the 23d of November, 1680, upon the examination of ſeveral perſons at the Bar, who had ſerved on the Grand Jury for Middleſex, which had been diſcharged by the Lord Chief Juſtice Scroggs; and of ſeveral other perſons who had been preſent when Mr. Baron Weſton gave his charge at the Aſſizes for Surry.—See the debate upon theſe proceedings in Grey's Debates, Vol. VIII. p. 53. et ſubſ. and in the 7th Vol. of the State Trials, p. 479.

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favouring Papiſts, and perſons Popiſhly affected, and exceſſively oppreſſing his Majeſty's Proteſtant ſubjects.

(4.)

That the refuſing ſufficient bail in certain caſes, wherein the perſons committed were bailable by law, was illegal, and a high breach of the liberty of the ſubject.

(5.)

That certain expreſſions, in a charge given by Baron Weſton, were a ſcandal to the Reformation, in derogation of the rights and privileges of Parliaments, and tending to raiſe diſcord between his Majeſty and his ſubjects *.

(6.)

That certain Warrants iſſued by Chief Juſtice Scroggs, againſt printers and bookſellers, are arbitrary and illegal.—The Houſe agree to theſe Reſolutions;—and immediately reſolve, † That Sir W. Scroggs, Chief Juſtice of the King's Bench, Sir Thomas Jones, one of the Juſtices of the King's Bench, and Sir Richard Weſton ‡, one of the Barons of the Court of Exchequer, be im-

* Amongſt other matters in Baron Weſton's charge, after abuſing Luther, Calvin, and the other reformers, for having acted "againſt "the minds of their Princes," he adds, "and "now their diſciples are reſtleſs, amuſing us "with fears, and nothing will ſerve them but "a Parliament; for my part, I know no re-"preſentative of the nation, but the King: "all power centers in him."—See the proceedings of the Houſe of Commons, on the 24th and 26th of November, 1795, touching a pamphlet which was declared by them to be "a malicious, ſcandalous, and ſeditious libel, "&c."

† The articles againſt Sir William Scroggs are reported on the 3d of January, and carried up to the Lords, on the 7th.—They impeach him, though *a Commoner*, of "High "Treaſon" and other high crimes and miſdemeanors.—The Chief Juſtice delivers in his anſwer to theſe articles, *in the ſubſequent Parliament*, but does not, as a Commoner, plead to the Lords juriſdiction.—See the proceedings againſt the other Judges, in the State Trials, Vol. III. p. 218.

‡ The Reſolution reported from the Committee reſpecting Baron Weſton's charge to the jury, was amended by the Houſe as follows: "That the expreſſions in the charge "given by the ſaid Baron Weſton were a "ſcandal to the Reformation; and tending to "raiſe diſcord between his Majeſty and his "ſubjects, and to the ſubverſion of the an-"cient conſtitution of Parliaments, and of the "government of the kingdom."

peached

peached upon the ſaid Report and Reſolutions. And a Committee is appointed to prepare impeachments accordingly *.

17. On the 9th of November, 1680, Richard Thompſon, Clerk, is ſent for, in cuſtody of the Serjeant, to anſwer at the Bar, for a high miſdemeanor againſt the Privileges of the Houſe †. On the 6th of December, he petitions; which Petition, on the 8th, is referred to a Committee to examine; and alſo the matter of the complaint for which he ſtands committed. On the 24th of December, the report from this Committee is taken into conſideration; and the Houſe reſolve, "That Richard Thompſon, Clerk, hath publicly de-"famed his ſacred Majeſty; preached ſedition; vilified the Refor-"mation; promoted Popery, by aſſerting Popiſh principles, decry-"ing the Popiſh plot, and turning the ſame upon the Proteſtants; "and endeavouring to ſubvert the liberty and property of the ſub-"ject, and the Rights and Privileges of Parliament.—And that he "is a ſcandal to his function."—They then reſolve, That he be impeached upon the ſaid Report and Reſolutions ‡; and a Committee is appointed to prepare the impeachment §.

18. On the 6th of January, 1680, upon reading a Report from a Committee appointed to receive informations relating to the Po-

* See the further proceedings againſt Sir W. Scroggs, under the following titles, and more at length in the State Trials, Vol. VII. p. 479, where it will be found, that, though ſeveral Members expreſs their doubts how far the Commons ought to impeach, for High Treaſon, a perſon as guilty of crimes which are not declared to be ſuch by the Statute of Treaſons, the 25th Edward III. no perſon doubts, but that, if the crime charged does amount to High Treaſon, Sir W. Scroggs, a Commoner, is an object of impeachment, though for a capital offence.

† It appears from the Report, which is entered in the Journal of the 24th of December, that the principal complaint againſt Thompſon, was for a ſermon that he had preached, on the 30th of January, 1679, againſt the Preſbyterians, and in favour of Popery—and reflecting on the proceedings about the Popiſh Plot.

‡ On the 5th of January, Thompſon petitions—and the Serjeant is impowered to receive ſufficient ſecurity for his forthcoming to anſwer to the impeachment of this Houſe againſt him.

§ This Committee have power to receive further information againſt the ſaid Richard Thompſon; and to ſend for perſons, papers, and records.

piſh Plot in Ireland—the Houſe reſolve, nemine contradicente *, That Richard Pore, Eſquire, Earl of Tyrone in the kingdom of Ireland, be impeached of high treaſon. Lord Durſley is ordered to go up to the Bar of the Houſe of Lords and impeach him; and to pray that he may be committed to ſafe cuſtody †.

19. On the 25th of March, 1681, upon reading a report of ſeveral examinations, that had been taken, relating to the Popiſh Plot; the Houſe reſolve, "That Edward Fitz Harris be impeached of "high treaſon." And Mr. Secretary Jenkins ‡ is ordered to go up, the next morning, and impeach him at the Bar of the Lords Houſe.

* Here is another inſtance of an impeachment carried up againſt a Commoner for high treaſon.—Sir William Jones, in the debate, ſays, "There is no queſtion, but a Peer of "Ireland is but a Commoner in England; "and no queſtion but he may be proceeded "againſt by impeachment, as well as by com-"mon trial.—You cannot miſtruſt your Ma-"nagers, nor a common jury; but the accu-"ſation of Lord Tyrone ariſing in Parlia-"ment, it is propereſt he be tried in Parlia-"ment."—Mr. Boſcawen ſays, "No Com-"moner can be tried by the Lords, but by "impeachment of the Commons."—It appears that Sir J. Trevor, Sir Francis Winnington, and Serjeant Maynard, concurred in this proceeding.—Grey's Debates, Vol. VIII. p. 257.

† When this impeachment is carried up to the Lords, on the 7th of January, the meſſage proceeds to ſay, "That in due time the Com-"mons will bring up articles to make good "their impeachment."—It appears from Grey's Debates, that Lord Tyrone was at this time a priſoner in the Gatehouſe.

‡ Mr. Secretary Jenkins was much offended at being appointed to carry up this meſſage, and ſaid, "The ſending me up with this "impeachment, reflects upon his Majeſty my "maſter, in the character I bear under him—"and I will not go on the meſſage." This refuſal to obey the orders of the Houſe raiſed a great heat; and Mr. Secretary was on the point of being ſent to the Tower, but was prevailed upon to aſk pardon of the Houſe, which he did; and declared himſelf ready to obey the orders of the Houſe.—Grey's Debates, Vol. VIII. p. 305.—See more of this gentleman in the note to p. 27 of the 3d Volume of this work.

IMPEACH-

# IMPEACHMENT.

## II. *Proceedings in the Houſe of Commons, previous to carrying up the Charge.*

1. WHEN the Commons had reſolved to accuſe Sir Giles Mompeſſon to the Lords, they immediately, on the 28th of February, 1620, committed him to the cuſtody of the Serjeant at Arms, in order to be forthcoming. But he eſcaping out of cuſtody, the Commons acquainted the Lords with this circumſtance; and they, on the 3d of March, give orders to the Lord Warden of the Cinque Ports, to the Lord Preſident of Wales, and to the Lord Preſident of the Council of York, for ſearch to be made, and to apprehend and bring him before them. And the like directions were given to the Lord Treaſurer and Lord Admiral, for the ſame orders to be given by them to the Officers under their juriſdiction *.

2. On the 18th of April, 1621, upon a report from a Committee, of evidence of bribery and corruption, againſt Sir Jo. Bennet, a Member of the Houſe, in his capacity of Maſter in Chancery, and Judge of the Prerogative Court of Canterbury †—the charges are

* There was alſo a Proclamation ſent forth by the King for apprehending Sir Giles Mompeſſon, and bringing him to the Tower.—Which ſee in Rymer's Fœd. Vol. XVII. p. 284.

† In a debate, on the 20th of April, upon this matter, Mr. Pym ſays, "The two Houſes "of Parliament were anciently but one, but "being divided, the power was divided alſo; "the power of inquiſition was left to this "Houſe, that of judgment was left in moſt "caſes to the Lords.—But in ſome caſes this "Houſe is not barred;—that the power of "execution is in us with the Lords;—that we "ſhould reſerve this power of inquiſition, in "this buſineſs, wholly to ourſelves."—See Parliamentary Proceedings, 1620-1, Vol. I. p. 283.

drawn

drawn out, and the heads of them are ſent to him; and time is given to him to anſwer.—On the 23d of April he is heard by Counſel at the Bar.—He is then ordered to be committed to the cuſtody of the Sheriffs of London, for his forthcoming, and is expelled. And on the 24th of April, he is charged before the Lords, at a Conference held for this purpoſe.

3. On the 5th of April, 1624, Sir Miles Fleetwood charges the Lord Treaſurer, Sir Lionel Cranfield, then Earl of Middleſex*, with taking bribes. His charge is delivered in and read; and referred to the Committee of Grievances, who are to examine it immediately; and notice to be ſent to the Treaſurer, that ſomebody from him may attend the Committee this afternoon.—On the 9th of April, Sir Edward Coke reports the matter under one head. Copies of further charges are ſent to the Lord Treaſurer, and the Committee are to ſit the next day to examine them: but, at his deſire, further time is given him to anſwer. Sir Edward Coke reports on the 12th of April; and the Houſe reſolve, That there is good ground for ſome of the charges of bribery; and that theſe, with the other charges, for converting wardſhips, and extorting fees, be preſented to the Lords. And a Committee is appointed to reduce them into form, and preſent to the Houſe the frame and model. Sir Edward Coke makes the report from this Committee on the 15th of April.

4. On the 7th of May, 1624, Sir Edward Coke reports from

* This Lord Treaſurer was Sir Lionel Cranfield, who, Mr. Hume ſays "had been "raiſed by Buckingham's intereſt, from the "rank of a London merchant, to be Lord "High Treaſurer of England; and by his "activity and addreſs, ſeemed not unworthy "of that preferment.—But, having incurred "the diſpleaſure of his patron, by ſcrupling or "refuſing ſome demands of money, during the "Prince's reſidence in Spain, the Favourite "vowed revenge, and employed all his credit "among the Commons, to procure an im"peachment of the Treaſurer." Hiſtory of James Iſt, Ch. 5.—See the note to N° 2. in the title "Commons demand judgment," in this chapter.

the Committee of Grievances, ſeveral complaints againſt the * Biſhop of Norwich. The Houſe reſolve to tranſmit them to the Lords, at a Conference, but firſt to digeſt and preſent them to the Houſe in writing; which is done the next day, and allowed. —On the 19th of May, Sir Edward Coke makes a report of what paſſed at the Conference †, That he had delivered the charges, conſiſting of ſix heads; and that the Lords had anſwered, "That "they would take ſuch order therein, as ſhould appertain to juſtice, "and our ſatisfaction ‡."—On the 28th of May, Mr. Pym is ordered to collect the charge againſt the Biſhop, and to preſent it to the Houſe; which he does on the 29th, on which day the Parliament is prorogued.

5. On the 17th of April, 1626, Mr. Pym reports the buſineſs concerning Mountague's books §, with the opinion of the Committee,

* This Biſhop of Norwich was Dr. Samuel Harſnet, who, in 1628, was elected Archbiſhop of York. See his life in the Biogr. Britannica.

† But ſee this more at large in the Lords Journal of the 19th of May, with the Biſhop's anſwers to the ſeveral heads of charge;

The charges are as follow:

(1.) That the Biſhop inhibited or diſheartened preachers on the Sabbath-day in the forenoon.

(2.) That images were ſet up in the church, and one of the Holy Ghoſt fluttering over the front; and a marble tomb pulled down, and images ſet up in the room; and the Biſhop bleſſed them that did it.

(3.) That he puniſhed thoſe that prayed not towards the Eaſt.

(4.) That he puniſhed a Miniſter for catechiſing his family, and ſinging pſalms.

(5.) That he uſed extortion many ways.

(6.) That he did not enter inſtitutions, to the prejudice of patrons.

‡ The Lords, upon receiving the report of the charge, and hearing the Biſhop's anſwers, reſolved, from the multiplicity of buſineſs in which they were then engaged, to refer the examination of it to the High Commiſſion Court; and nothing further appears upon this ſubject in the Lords Journals.

§ One of theſe books had been complained of as long ago as the 13th of May, 1624, as fraught with dangerous opinions of Arminius, contrary to the articles eſtabliſhed; and the Houſe had then ordered the Archbiſhop of Canterbury to be acquainted with it, and the meſſage to be delivered to him by ſeveral Members.—In the next Parliament, on the 7th of July, 1625, Mr. Recorder reports the Archbiſhop's anſwer to the meſſage; and notice is then taken of another book, written by the ſame Mountague, intitled, "Appello Cæſarem." The Houſe reſolve this laſt to be a contempt of the Houſe; and commit him to the Serjeant, to be forthcoming in the next Seſſion of Parliament; when it is determined to

mittee, That he ſtands convicted of all the three heads of the charge; and that, as a public offender againſt the peace of the Church, he be preſented to the Lords, there to receive puniſhment according to his demerits.—The Houſe reſolve to put off the conſideration of this matter for three days; and that he ſhould have notice to be heard here, if he will.—On the 29th of April, the charges are read and agreed to; and are ordered to be tranſmitted to the Lords, for their judgment upon them.

6. On the 25th of March, 1626, a report is made from the Committee for Evils, Cauſes, and Remedies, containing ſeveral reſolutions of the evils under which the nation ſuffered, and of the cauſes of thoſe evils; which laſt all center in the Duke of Buckingham. The Houſe fix a day for taking this report into conſideration, and order the Duke, then Lord High Admiral, to have notice given him of it*. On the 20th of April, the Houſe reſolve to charge him before the Lords. Mr. Mountague is accordingly brought to the Bar, and kneeling, Mr. Speaker pronounces the judgment accordingly.—On the 9th of July, the king ſends word, That, Mountague being his Chaplain, he had taken the cauſe into his own hands, and wiſhed the Houſe to enlarge him.—The Houſe return for anſwer, by Mr. Solicitor, That they had committed him only for his contempt to the Houſe, and that the Serjeant had already ſet him at liberty upon bail.

* The King, alarmed at this attack upon his favourite Miniſter, ſends, on the 28th of March, for both Houſes to attend him at Whitehall, when the Lord Keeper, by his Majeſty's direction, makes a ſpeech to them—which ſee in the Parliamentary Hiſtory, Vol. VI. p. 444.—Amongſt other very extraordinary paſſages in this ſpeech, the following gave very great offence: "With regard to "the Duke of Buckingham, it is his Majeſty's "expreſs and final commandment, That you "yield obedience unto thoſe directions, which "you have formerly received, and *ceaſe this* "*Unparliamentary inquiſition.*"—To which the King adds for himſelf, "Indeed I think it "more honour for a King to be invaded, and "almoſt deſtroyed, by a foreign enemy, than "to be deſpiſed by his own ſubjects. Re"member! that Parliaments are altogether "in my power, for their calling, ſitting, and "diſſolution; therefore, as I find the fruits "of them good or evil, they are to continue "or not to be."—On the 30th of March, the Lords deſire a preſent meeting of a Committee of both Houſes, becauſe ſome Lords have power to make explanation to the Commons of ſome expreſſions in his Majeſty's ſpeech, and in the Lord Keeper's. This conference is held in the Painted Chamber, between the Grand Committee of the whole Houſe, and the Committee of the whole Houſe

ſolve to proceed in this matter from day to day, ſetting all other buſineſs aſide till this be finiſhed; and a Select Committee is appointed * to reduce the ſtate of the matter into form, and to ſearch for, and make uſe of and apply, precedents for it. On the 22d of April, ſeveral other charges are reported againſt the Duke, and he is directed to have notice of theſe; and a day is fixed for his appearing, and making his defence, if he pleaſe to make any. To which meſſage he replies, on the 24th, That he could give no anſwer till he had acquainted the Lords with it, and aſked their leave; and now, having ſo done, their Lordſhips had refuſed him leave. Upon the Duke's not attending, the Houſe come to ſeveral reſolutions, That the Duke was the cauſe of the ſeveral evils therein ſpecified.—On the 27th and 28th of April, and 1ſt of May, ſeveral other charges are agreed to, and annexed; and on the 2d of May, it is agreed to tranſmit the charges agreed to, to the Lords.

7. On the 14th of May, 1628, Mr. Pym reports from the Grand Committee for Religion, the buſineſs concerning Mr. Mainwaring for the matter contained in two ſermons; and it is reſolved, That this complaint, and theſe crimes, be tranſmitted to the

Houſe of Lords. It is reported by Sir Dudley Digges, the next day; when, notwithſtanding his Majeſty's explanation, as made by the Lord Duke, the Lord Chamberlain, and the Lord Conway, and the Lord Duke's Apologetical Narration, the Houſe reſolve, "That "an anſwer ſhall be ſent to his Majeſty, that "our proceedings have been Parliamentary; "and a remonſtrance to his Majeſty of our pri-"vileges." This remonſtrance was preſented on the 5th of April, 1626, and is inſerted in the Appendix to this volume, N° 5.—See Parliamentary Hiſtory, Vol. VI. p. 451, et ſubſ.

* Mr. Glanvylle, from this Select Committee, acquaints the Houſe, on the 24th of April, That they underſtand ſome exceptions had been taken, by ſome Members of the Houſe not named upon the Committee, againſt their keeping their examinations private, without admitting other Members; and a debate aroſe in the Houſe, "Whether Members, not of a "Select Committee, may come to the Select "Committee?" It is reſolved, "That at "the examination of witneſſes, any Member "of the Houſe may be preſent; but the Select "Committee only are to ſend for the wit-"neſſes, and examine them:" And it is ordered, "That no Member of the Houſe "ſhall be preſent at the debate, diſpoſition, or "penning of the buſineſs by the Select Com-"mittee, but only to be preſent at the exami-"nation, and that without interpoſition."

Lords;

Lords; and a Committee is appointed to draw up the charge. On the 27th of May, the charge is reported, and ordered to be ingroſſed and preſented to the Lords.—Mr. Pym is to deliver the charge, and to ſtrengthen the ſame, and ſeveral aſſiſtants are appointed.—On the 31ſt of May, the Houſe being informed by a Member that Doctor Mainwaring deſired to be heard here, leave is given to him to attend on the 2d of June, if he will, to make his defence, and that he ſhall be then heard *.—On the 4th of June, a Conference † is deſired with the Lords upon this charge.—On the 12th of June, a further meſſage is ſent to the Lords touching this buſineſs ‡,

8. On

* I do not find that Doctor Mainwaring ever availed himſelf of this permiſſion, or that he was heard before the Houſe of Commons.

† See the report of this Conference, and the manner of Mr. Pym's delivering the charge, in the Lords Journal of the 9th of June, 1628; upon which report Doctor Mainwaring is immediately ordered to be taken, and kept in ſafe cuſtody, by the Serjeant at Arms attending the Lords.—On the 10th of June ſome witneſſes, that had been examined, not proving the charge, and Mr. Pym having delivered in the names of ſome Members of the Houſe of Commons who could give evidence, the Lords ſend to the Commons for leave for them to attend; which is granted.

‡ This meſſage appears, from the Lords Journal of the 12th of June, to have been ſent, from its appearing that the book complained of, had been "printed by the King's "command," and was to deſire the Lords to enquire, by what means this command was obtained; and, when the Lords ſhall have found the party who gave the warrant, the Commons demand to have him puniſhed with as much ſeverity, or more, than Doctor Mainwaring himſelf.—Upon examining into this matter, on the 12th and 14th of June, it came out that Doctor Laud, Biſhop of Bath and Wells, had ſignified the *King's expreſs command* to the Biſhop of London, that the ſermon ſhould be printed.—And this declaration of the King's pleaſure, confeſſed by Biſhop Laud, is confirmed by the Earl of Montgomery, the Duke of Buckingham, and the Earls of Suffolk and Dorſet, who proteſted on their honours, "That "they had ſince heard his Majeſty affirm as "much."—Notwithſtanding this, the Lords, on the 16th of June, addreſs the King, that he will order this book to be burnt, and will give directions for prohibiting the printing of it.—To which addreſs, on the 18th of June, the King returns for anſwer, "*That he is well* "*pleaſed* at the Lords requeſt to ſuppreſs the "book, and to forbid its being printed again, "and has ordered a proclamation accordingly."—The tenets advanced by Dr. Mainwaring, in theſe ſermons, which were "firſt "publiſhed by the King's expreſs command," ſignified by Biſhop Laud, and which "the "King was afterwards well pleaſed to order "to be ſuppreſſed," were theſe:

1. That in matters of ſupplies, in caſes of neceſſity, the King had right to order all, as ſeemed good to him, without conſent of his people.

2. That the King might require loans of his people, and avenge it on ſuch as ſhould deny.

3. That the ſubject hath property of his goods in ordinary; but, in extraordinaries, the property was in the King.

It

8. On the 10th of April, 1628, a Mr. Vivian prefents a petition againſt Mr. Mohun, afterwards Lord Mohun, complaining of his conduct (it ſhould ſeem, as Deputy Warden of the Stannaries) in extending his power beyond its due limits, granting writs of privilege, &c.—This petition, on the 16th of April, is referred to the examination of a Committee; and on the 27th of May Sir John Eliot reports the facts.—On the 28th Lord Mohun is to have notice, to be heard to make his anſwer to this charge, if he will—and a Committee is appointed to draw up the charge.—On the 30th of May, Lord Mohun ſends word, That he chuſes to make his defence with the Lords, and expecteth the tranſmiſſion of the charge thither, when he will anſwer with all convenient ſpeed.—On the 14th of June the charge is read, allowed, and ordered to be ingroſſed.—On the 20th of June the witneſſes are diſcharged; and on the 26th the Parliament is prorogued.—In the next ſeſſion, on the 27th of January, 1628, a motion is made for reviving the order, for tranſmitting the charge againſt Lord Mohun to the Lords; but the conſideration of that motion is put off for a day or two; and on the 30th a warrant is ordered for witneſſes to attend to juſtify their former teſtimony.

It may not be improper to add to this note, That, within a few days after this tranſaction, Biſhop Laud was tranſlated to London; and, in 1635, Doctor Mainwaring was made Biſhop of St. David's—and this, though one of the articles of the judgment pronounced againſt him was, "That he ſhall be for ever diſabled "to have any eccleſiaſtical dignity, or ſecular "office." On the 18th of April, 1640, in the next Parliament that met after this tranſaction, the Lords took up this buſineſs again; and, having read the declaration of the Commons againſt the now Biſhop of St. David's, and the ſentence of the Lords, they refer the whole to their Committee of Privileges, with leave to the Biſhop to allege any thing before the ſaid Committee, on his part, either by pardon, licence, or otherwiſe. On the 21ſt of April, they order the records to be brought, that the Houſe may determine this cauſe.—But on the 28th of April, the King ſends a meſſage by the Lord Keeper, "That his Majeſty, "underſtanding there was ſome queſtion con-"cerning Doctor Mainwaring, now Biſhop "of St. David's, had given command that "the ſaid Doctor Mainwaring ſhall not come "and ſit in Parliament, nor ſend any proxy "to the Parliament."—Thereupon, it was ordered to be entered ſo.—Lords Journal.—I do not recollect to have ſeen this laſt very extraordinary (and illegal) exerciſe of the King's authority taken notice of in any hiſtory.—See further, Commons Journal, the 23d of February, 1640.

9. On

9. On the 11th of November, 1640, Lord Strafford is accuſed of high treaſon, by a meſſage ſent to the Lords *.—On the 21ſt of November, articles offered by a Member of the Houſe, againſt the Earl of Strafford, are referred to the Committee that are to draw up the charge againſt him.—On the 24th of November, Mr. Pym reports the articles †; the title, and every particular article of the charge, and the concluſion, and the addition to the concluſion, are diſtinctly read, and ſeverally put to the queſtion; and every particular of them reſolved upon vote by the Houſe.—They are then ordered to be ingroſſed—and Mr. Pym to carry them to the Lords.—On the 25th of November, being ingroſſed, they are again openly read in the Houſe, and on that day delivered by Mr. Pym to the Lords, at a Conference ‡.

10. On the 7th of December, 1640, Mr. St. John reports from the Committee on Ship Money, ſeveral reſolutions againſt thoſe Judges, that had given their opinions in that matter; and Members are ordered to attend them, to aſk, how they were ſolicited or threatened, and in what manner, and by whom, to give their judgment §.—On the 8th of December, a Committee is to prepare a charge

* It appears, That on the 6th of November, when the queſtion was put, upon the motion of Mr. Pym, "Whether the Iriſh affairs "ſhould be referred to a Committee of the "whole Houſe?" this was conſidered as laying the foundation for a charge againſt the Earl of Strafford; and that his friends therefore debated long againſt it; but that, upon a diviſion, the queſtion was carried by 165 to 152.—Notice of this was immediately ſent down to him, by expreſs, into Yorkſhire; with advice rather to continue there at the head of the army, than to come up and abide the teſt of Parliament. He determined upon the latter. —See Ruſhworth's account of this, and of the motives which induced Lord Strafford to take this ſtep, Vol. VIII. p. 1.

† Whilſt this report was reading, The outward room was cleared; and the keys of the outward door and houſe doors were brought up to the Clerk's table.

‡ See theſe articles, and the proceedings upon them, in the Lords Journal of the 25th of November, 1640.

§ In the 1ſt vol. of the State Trials, p. 483 to 695, are to be found all the proceedings upon this ſubject; from the commencement of the trial between the King and Mr. Hampden, to the exhibiting the articles againſt the Judges, for the opinions they delivered on this occaſion. On the 26th of February, 1640, the judgment given againſt Mr. Hampden, in the Exchequer Chamber, and all the Rolls in the ſeveral Courts, of King's Bench, Common Pleas,

charge againſt the Lord Keeper and the other Judges for this offence.—And, on the 22d of December, a meſſage is ſent to the Lords, to deſire *, that theſe Judges do, by themſelves and others, put in good ſecurity to abide the judgment of Parliament; for that there are informations, and ſeveral proceedings in examination, of crimes of a high nature againſt them in this Houſe.

11. On the 16th of December, 1640, a Committee is appointed to examine how far Archbiſhop Laud has been an actor in the great deſign of the ſubverſion of the laws of the realm, and of the religion; and to prepare and draw up a charge againſt him.—On the 18th of December a meſſage is ſent to the Lords, to accuſe the Archbiſhop of high treaſon, in the name of this Houſe, and of all the Commons of England, and to deſire that he may be forthwith ſequeſtered from Parliament, and be committed.—And that within

Pleas, Exchequer, Star Chamber, and Chancery, were all brought into the Houſe of Lords, and it was ordered, That a *Vacat* be made of the ſaid ſeveral records; which was accordingly done the next day the 27th of February, when the Lords reſolved, *Nemine contradicente*, "That the reſolutions of the Judges, "touching the ſhipping-money, and the "judgment given againſt Mr. Hampden in "the Exchequer, and all the proceedings "thereupon, are againſt the Great Charter, "and therefore void in law."—In Hilary Term, the 16th Charles I. in the caſe of Chambers v. Sir Edward Brumfield, late Mayor of London, "on an action of treſpaſs "of falſe impriſonment; The defendant juſti-"fied, by virtue of the King's writ, for not "paying money aſſeſſed towards finding a "ſhip. After argument, it was moved to "have judgment, becauſe it had been voted "and reſolved in the Upper Houſe and the "Houſe of Commons, nullo contradicente, "That the ſaid writ, and what was done by "colour thereof, was illegal; *therefore* the "Court would no further diſpute thereof, but "gave judgment for the plaintiff." Croke's 3 Reports, p. 601.—See in Rymer's Fœd. Vol. XX. p. 56, the form of this writ for levying ſhip-money, with a liſt of the ſeveral counties, cities, towns, and places to which it was directed; the ſize and tonnage of the ſhips, the number of men, and the quantity of ammunition, wages, and victuals, required from each.—There is a memorandum, "Quod 27 die Feb. 1640, iſtud irrotulamentum, et omnia et ſingula in eodem contenta, et expreſſa, vacantur, per judicium Dominorum Spiritualm et Temporalm in curia Parliamenti." Per me, Johm Browne, Cler. Parlrum."

* See in the Lords Journals of the 22d and 23d of December, the proceedings upon this meſſage, and the form and nature of the recognizances in which the Judges were ſeveverally bound.

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ſome convenient time the Houſe will reſort to their Lordſhips with particular articles and accuſations againſt him *.

12. On the 19th of December, 1640, a meſſage is ſent to the Lords, That the Commons, having certain informations of a high nature againſt Matt. Wren, Biſhop of Ely, and having likewiſe information that he endeavours an eſcape, deſire, that there may be ſome care taken, that he may give good ſecurity for his abiding the judgment of Parliament.—The Lords, immediately upon receiving the meſſage, order the Biſhop of Ely to put in ſufficient bail for ten thouſand pounds for his forthcoming, and abiding the cenſure of Parliament †.—On the 5th of July, 1641, the articles againſt the Biſhop are agreed to, and ordered to be ingroſſed; which are delivered at a Conference on the 20th of July ‡.

13. On the 21ſt of December, 1640, reſolved, That John Lord Finch, Lord Keeper of the Great Seal, ſhall be accuſed by this Houſe, in the name of all the Commons of England, of high treaſon, and other great miſdemeanors; and a meſſage is ſent by Lord Falkland for this purpoſe §, and to deſire that he may be forthwith

* See the form of the delivery of this meſſage, and the proceedings of the Lords (who immediately comply with the requeſt of the Commons) in the Lords Journal of the 18th of December.

† See, in the Lords Journals of the 19th and 23d of December, the form of taking the Biſhop's recognizance and bail.—See a ſimilar meſſage and proceeding, reſpecting Pierce, Biſhop of Bath and Wells, on the 24th of December.

‡ When the articles of impeachment are delivered againſt the Biſhop of Ely, the Commons, at the ſame Conference, communicate reſolutions to which they had come, "That "Matt. Wren, Biſhop of Ely, is unfit and unworthy to hold or continue any ſpiritual promotion or office in the church or commonwealth. And they deſire the Lords to join with them, to move his Majeſty, that the ſaid Biſhop of Ely may be removed from his perſon and ſervice;" but they deſire, that theſe ſhould be conſidered only as their opinion, and not as a mulct upon him.

§ This meſſage was not carried up to the Lords till the next day, the 22d of December, owing, as Lord Clarendon ſuggeſts, to the debate being purpoſely protracted, on the 21ſt, ſo late, that the Lords were then riſen.—In the interval the Lord Keeper withdrew himſelf, and ſoon after went into Holland.—On the 21ſt of December, previouſly to the Houſe coming

forthwith ſequeſtered from Parliament, and committed; and that, within ſome convenient time, this Houſe will reſort to their Lordſhips with particular accuſations and articles againſt him.—The Lords immediately reſolve to ſequeſter and commit the Lord Keeper; but, he being miſſing, they ſend a meſſage to the Commons, That they will commit him when he is found.

14. On the 24th of December, 1640, the Committee on Lord Strafford's buſineſs have power given them to examine witneſſes concerning Sir George Ratcliffe, and to prepare a charge againſt him, and to preſent it to the Houſe.—On the 29th of December, theſe articles of charge are read—the Houſe then reſolve, (1.) That he be accuſed of high treaſon, in the name of all the Commons of England;—(2.) That theſe articles ſhall be the ground of this accuſation;—(3.) That a meſſage be ſent to the Lords to accuſe him of high treaſon, in the name of this Houſe, and of all the Commons of England; and that the Commons will ſpeedily

coming to the reſolution to impeach him, he was, at his own deſire, admitted into the Houſe of Commons, where he ſpoke for a long time.—Whitelocke, who was preſent at this ſcene, ſays, "Many were exceedingly taken with "his eloquence and carriage; and it was a "ſad ſight to ſee a perſon of his greatneſs, "parts, and favour, to appear in ſuch a "poſture, before ſuch an aſſembly, to plead "for his life and fortunes."—Whitelocke's Memoirs, p. 38.—The Lord Keeper's ſpeech is printed in the Parliamentary Hiſtory, Vol. IX. p. 126; in which he ſays, ſpeaking of ſhip-money, "I was neither the author nor "adviſer of this meaſure; and will boldly "ſay, that, from the firſt to this hour, I never "did adviſe nor counſel the ſetting forth any "ſhip writs in my life."—Lord Clarendon attributes the adviſing this illegal meaſure to Noy, the Attorney General, "Noy was a very able and learned man; he had an affected moroſity, which, though it made him unapt to flatter other men, rendered him the moſt liable to be groſsly flattered himſelf, that can be imagined.—And by this means, the great perſons who ſteered the public affairs, by admiring his parts and extolling his judgment, as well to his face, as behind his back, wrought upon him by degrees to be an inſtrument in all their deſigns.—And he, (thinking that he could not give a clearer teſtimony, that his knowledge of the law was greater than all other men's, than by making that law, which all other men believed not to be ſo) moulded, framed, and purſued the odious and crying project of ſoap, and with his own hand drew and prepared the writ for ſhip-money; both which will be the laſting monuments of his fame.—In a word, he was an unanſwerable inſtance, how neceſſary a good education and knowledge of men is, to make a wiſe man, at leaſt a man fit for buſineſs."

*Hiſt. of the Rebell. Vol.* I. *Book* i. *p.* 57.

bring

bring articles againſt him*, and, (4.) That theſe articles be ingroſſed againſt to-morrow morning, and be ſent to the Lords as a charge againſt him.—Theſe articles, when ingroſſed, are twice read on the 31ſt of December, and delivered to the Lords at a conference †.

15. Notwithſtanding the abſence of the Lord Keeper Finch, and that he could not be found, the Commons, on the 5th and 11th of January, 1640, proceed to draw up the charge and articles againſt him; and on the 13th reſolve, "That there may be ſuch proceed-"ings againſt the late Lord Keeper, notwithſtanding his abſence, as "in caſes of the like nature are deſired againſt other men." On the 25th of January, it is moved in the Houſe of Lords, That a proclamation be iſſued, whereby the Lord Keeper Finch, being accuſed of high treaſon by the Houſe of Commons, may take notice of it, and come in at a certain day to his trial.—This motion is on the 26th referred to the Committee for Judicature.—And on the 6th of February, the proclamation is ordered to be prepared for his appearance; or elſe that proceeding be againſt him for the default of his not

* The Lords take notice, upon the delivery of this meſſage, on the 29th of December, that the Commons did not deſire, That Sir George Ratcliffe ſhould be committed to ſafe cuſtody, they therefore ſend a meſſage to the Commons, by the Maſter of the Rolls and Judge Reeves, to know, whether they do expect that their Lordſhips ſhould preſently make ſafe his perſon.—The Commons immediately return an anſwer, That they gave no ſuch inſtructions to their meſſengers, becauſe Sir George Ratcliffe is already in ſafe cuſtody in the Gatehouſe (he had been committed thither by the Commons on the 9th of December) and they intended to have acquainted their Lordſhips with this, when they had produced the articles againſt him, which would be ſhortly —but that they now refer to their Lordſhips what to do in it, and to put this cauſe under examination ſecretly and ſpeedily.—The Lords reply, That they will ſend for Sir George Ratcliffe, and take order for his ſafe cuſtody. He was accordingly, the ſame day, the 29th, ſent for from the Gatehouſe, and brought as a delinquent to the bar: And it was then ordered, That he ſhall be committed to the Gatehouſe upon this accuſation of "High Treaſon" by the Commons, there to remain in ſure and ſafe cuſtody, till further orders.

† See, in the Lords Journal of the 31ſt of December, theſe articles, and Mr. Pym's ſpeech on delivering them, with the further proceedings of the Lords in allowing him counſel, and examining witneſſes againſt him.—On the 30th of January, the Commons reſolve upon further articles, which are ingroſſed, and delivered to the Lords at a conference on that day.

appearing *.—See this proclamation in the Lords Journal of the 13th of February.

16. On the 6th of March, 1640, the charge and impeachment of miſdemeanors againſt Dr. Coſins, and others, are read. Some of the articles are agreed to, one diſagreed to. On the 9th of March, the reſt are agreed to, and ordered to be ingroſſed.—On the 11th, the ingroſſed articles are again read, and ordered to be carried to the Lords.—On the 16th of March, they are delivered to the Lords at a Conference; when the Lords immediately order Dr. Coſins, and all the reſt of the parties named, to be ſent for by the Gentleman Uſher, and to appear on the 18th, to receive ſuch further commands as the Houſe ſhall pleaſe to order.—On the 18th of March, the Lords order, that Dr. Coſins, and the others named in the impeachment, being now in cuſtody of the Gentleman Uſher, do put in bail † to-morrow morning, to abide the judgment of Parliament ‡.

17. On the 31ſt of May, 1641, Mr. Hyde, from the Committee

* On the 9th of March, 1640, it is moved in the Houſe of Lords, that ſome ſignification be made to the Houſe of Commons, "That "if the Lord Finch comes not in, and appear "here according to the proclamation, then "they may proceed againſt him in their accu-"ſation of high treaſon;" which the Houſe approve of.

† See, on the 20th and 30th of March, in the Lords Journal, the form and nature of the ſecurity entered into by Dr. Coſins, and the others—and, on the 14th and 28th of July, 1641, the proceedings of the Lords in the hearing of this matter.

‡ On the 19th of May, 1641, upon a complaint made to the Commons by the pariſhioners of the pariſh of St. Gregory's, London, againſt *Inigo Jones* for pulling down their church; a charge is formed, and ſent up to the Lords.—On the 10th of May, 1642, the Lords ſend word, That they have appointed Friday next, to hear *the cauſe* between Inigo Jones and the pariſhioners—upon which, the Commons appoint ſeveral Members to manage the evidence againſt Inigo Jones, before the Lords, *upon the impeachment of the Commons:* but on the next day, the 11th of May, the Commons reſolve, "That, in this caſe of St. "Gregorie's, (in reſpect *it is no impeachment*, "but a declaration of the injuries done to the "pariſhioners, and of their private intereſt), "no Members do attend the management of "it in the Houſe of Lords."—On the 16th of May the Lords order the pariſh church of St. Gregory's to be ſpeedily rebuilt, which probably put an end to the diſpute.—See a full account of this tranſaction, in Inigo Jones's Life, in the Biographia Britannica.

about

about the Judges, reports the ſeveral charges.—And the articles of impeachment againſt Judge Berkley, for "High Treaſon *," were read and agreed to, article by article, and ordered to be ingroſſed.—See the ſame proceeding, in the caſe of Lord Chief Juſtice Bramſton, on the 29th of June, and of the Lord Chief Baron Davenport, on the 1ſt of July †. On the 2d and 3d of July, the articles are ſent to the Lords, with a deſire that the Judges may make anſwer to their ſeveral impeachments ‡.

18. On the 30th of July, 1641, a Committee is appointed to prepare an impeachment againſt the Biſhops, the Makers of the new Canons and Oath, upon the votes that have paſſed both Houſes, concerning thoſe Canons and Oath.—The report is made on the 3d of Auguſt; and on the 4th the form of the impeachment is agreed to; and the articles are carried up by Mr. Serjeant Wylde on that day §.

19. On

* The nature of the treaſon of which Judge Berkley was impeached, appears from Ruſhworth's Collection, Vol. IV. p. 318, to have been "for endeavouring to ſubvert the fundamental laws and eſtabliſhed government of the realm of England; and, inſtead thereof, to introduce an arbitrary and tyrannical government, againſt law; which he hath declared by traitorous and wicked words, opinions, judgments, practices, and actions."—In his argument in the caſe of ſhip-money, Judge Berkley had ſaid, "I never read nor heard, that *Lex* was *Rex*; but it is common and moſt true, that *Rex* is *Lex*; for he is *Lex loquens*, a living, a ſpeaking, and an acting law; and, becauſe the King is *Lex loquens*, therefore it is ſaid, *Rex cenſetur habere omnia jura in ſcrinio pectoris ſui.*" State Trials, Vol. I. p. 603.—In the Lord Say's caſe, which is reported in Croke, Vol. III. p. 524, the Court would not permit Mr. Holborne, Lord Say's counſel, to argue againſt the judgment given in the Exchequer Chamber againſt Mr. Hampden, to which Lord Say had not been a party; Bramſton, Jones, and Berkley ſaying, "That ſuch a judgment ought to ſtand, until it were reverſed in Parliament; and none ought to be ſuffered to diſpute againſt it."

† Before the impeachments againſt theſe Judges are carried to the Lords, the Commons reſolve, on the 1ſt of July, That the Members, to whoſe care they are committed, do take care that ſome conſideration may be had, for reparation and ſatisfaction to be given to the parties grieved, and to make all expedition with the impeachments, and then to go by Bill—and in the Bill to ſet the fines certain.

‡ On the 5th of Auguſt, 1641, the Lords, at the deſire of the Commons, communicated at a conference, reſolve, That the "peccant" Judges ſhall not be named in the commiſſions for the circuits; for, "that for them, being thus impeached, to become judges of men's lives and eſtates, would be a thing of great offence and diſtraction."

§ Theſe articles were not communicated at a Con-

19. On the 5th of Auguſt, 1641, the Houſe reſolve to take into conſideration the articles againſt Mr. Jermyn, Mr. Piercy, and others; and to conſider what title to give them *.—On the 12th of Auguſt, the articles are taken into conſideration; and the Houſe reſolve

a Conference, but carried up to the Bar of the Houſe of Lords by Mr. Serjeant Wylde, and delivered there.—On the 13th of Auguſt, further and more explicit articles of charge are carried up; and on the 27th of October, the Commons deſire, That theſe thirteen Biſhops may be excluded from voting in Parliament; and that *all* the Biſhops may be ſuſpended from voting on the Bill then depending, relating to the clergy.—The following circumſtances relating to this proſecution, and to the Bill for excluding the Biſhops from the Houſe of Lords, are related in Ambroſe Philips's Life of Archbiſhop Williams, p. 277—280. "From this time the Biſhops durſt not "come near the Parliament Houſe, either by "land or water; the paſſages were ſo beſet "againſt them, and they ſo vehemently "threatened by the people. Upon this, the "Archbiſhop of York, with eleven more of "his brethren, met the next day at his lodg-"ings. There he drew up a petition and "proteſtation, firſt to crave protection, and, "upon want thereof, a poſitive declaration, "that whatever was done at the Lords Houſe, "during their forced and involuntary ab-"ſence, was invalid and of none effect. The "other Biſhops, relying upon York's great "knowledge in the laws, did, at his requeſt, "ſet their hands to it. And the Lord Keeper "Finch, when he ſaw it, did profeſs, that it "was the ſtrongeſt and the fulleſt of law of "any that he ever ſaw in his life. For the "Biſhop had modelled it exactly by one of "the ſame nature, that he had found in the "records in the Tower."

Upon preſenting this petition and proteſtation (which is entered in the Journal of the 30th December, 1641), the Biſhops, who ſigned it, were impeached by the Commons of High Treaſon, and thereupon, by the Lords, committed to the Tower.—"Whilſt the "Biſhops were thus ſecured in the Tower, "and ſcarce any body left to ſpeak in their "behalf, the Bill againſt them was brought "in, and it paſſed currently in the Houſe of "Lords; for which they themſelves after-"wards ſuffered in the ſame ſort from the "Commons, as the Biſhops did now from "them.—The Lords temporal deprived the "Biſhops of their rights, and the Commons "then excluded the Lords temporal from "theirs.—Which conſequence might have "been foreſeen, had they liſtened to the Mar-"quis of Dorcheſter, who, upon the 21ſt of "May, aſked the Peers, Which of your Lord-"ſhips can ſay, he ſhall continue a Member of "this Houſe, when at one blow ſix and twenty "are cut off?"—On the firſt day of the ſeſ-ſion, which was held on the 12th of April, 1540, The Mitred Abbots of the Religious Houſes (who had always had ſeats in the Houſe of Peers, and whoſe titles are entered in the Lords Journals, as being preſent, on the 28th of June preceding) firſt diſcontinued to ſit there —though not formally or by name excluded by the Statute that had paſſed the year before, in the 31ſt Henry VIII. Ch. 13. intituled, "An Act for diſſolution of Monaſteries and "Abbies." Hume obſerves, "That when "this Act paſſed the Houſe of Lords, none "of theſe Mitred Abbots made any proteſta-"tion againſt it."

* See Lord Clarendon's account of the plot, for which Mr. Jermyn and Mr. Piercy were accuſed.—Hiſtory of the Rebellion, Vol. I. p. 210, et ſubſ.; and the Queen's account of this affair, as told by herſelf to Mad. de Motteville; Memoires d' Anne d' Autriche, Vol. I. p. 253 to 258.—This Mr. Jermyn was afterwards

reſolve to charge them all ſeverally with "High Treaſon."—See the 13th of Auguſt, P. M. and the 17th of December, 1641.

20. On the 17th of November, 1660, complaint being made of a book, intituled *; "The Long Parliament revived," and one Drake being named for the author—Drake was called in, and acknowledging himſelf to be the penner of the book, he is committed to the Serjeant at Arms; and a Committee is appointed to examine the book, and to ſtate the offenſive paſſages to the Houſe. Mr. Serjeant Rainsford reports theſe paſſages on the 20th of November; on which the Houſe reſolve, (1.) That the pamphlet is ſeditious; and, (2.) That a Committee be appointed to draw up an impeachment againſt William Drake, the author; and that the ſaid

terwards made Lord Jermyn, and, juſt before the Reſtoration, was created Earl of St. Alban's. It appears, from Lord Clarendon, that he was always in great favour with the Queen Mother, Henrietta Maria, and directed all her councils whilſt ſhe was abroad. Sir John Rereſby, who was in her Court at Paris, in 1659, ſays, "Lord Jermyn, ſince St. Alban's, "had the Queen greatly in awe of him; and "indeed it was obvious, that he had great "intereſt with her concerns; but that he was "married to her, or had children by her, as "ſome have reported, I did not then believe, "*though the thing was certainly ſo.*"

*Rereſby's Memoirs, p. 4.*

* The doctrine contained in this book appears (from the extracts in the Commons Journal of the 20th of November, 1660, and from the articles, which are entered at length in the Lords Journal of the 6th of December) to have been, "That the Long Parliament was, "by law, ſtill the legal Parliament."—It appears from Vol. II. of this work, p. 280, that though that Long Parliament had been diſſolved by an Ordinance iſſued from the Rump Parliament, yet that it was thought neceſſary, after the Reſtoration, by an Act of Parliament, to declare, "That that Parliament, begun and "holden at Weſtminſter on the 3d of Novem-"ber, 1640, was fully diſſolved and deter-"mined." The royal aſſent had been given to this Bill by King Charles II. on the 1ſt of June, 1660;—notwithſtanding which, it appears, that, at the time Drake publiſhed this pamphlet, very conſiderable and legal doubts were ſtill entertained upon this queſtion; inſomuch that, on the 24th of May, 1661, (ſubſequent to this impeachment) the Houſe of Lords thought proper to call upon the Judges to deliver their opinion upon it;—and on the 6th of June, they order the Attorney General to prepare a third Bill upon this ſubject; which he does accordingly.—So that the Houſe of Lords (by giving orders to the Attorney General, on the 19th of December, 1660, to proſecute Drake in the Court of King's Bench) acted prudently, in availing themſelves of any excuſe, however trifling, for removing the trial of this ſuppoſed offence from themſelves to a court of law.—The pamphlet is publiſhed at length in the 23d vol. of the Parliamentary Hiſtory, in the Appendix, p. 187.

Committee be appointed to draw up articles againſt the ſaid William Drake.—Sir Heneage Finch immediately reports the impeachment; and an order is made for continuing William Drake in cuſtody.—On the 26th of November, the Solicitor General reports the articles, which are ordered to be ingroſſed *; and on the 4th of December are ordered to be carried to the Lords by Lord Falkland.

21. A Committee is appointed, on the 18th of December, 1666, for drawing up an impeachment againſt the Lord Mordaunt, for illegally diſpoſſeſſing Mr. Tayleur of ſome apartments in the Caſtle at Windſor, and arbitrarily impriſoning his perſon. On the 21ſt of December, Mr. Prynn reports the articles †.—On the 22d they are ingroſſed, and read; and amended and agreed to ‡.

22. When the Committee is appointed, on the 26th of October, 1667, to look into precedents relating to the method of proceeding on impeachments, it was in conſequence of a debate in the Houſe, Whether the reducing the crimes, which had been alleged againſt

* See the articles at length in the Commons Journal, the 4th of December, 1660. They conclude, "All which practices, for "ſtirring up of ſedition, the Commons are "ready to prove, not only by the general "ſcope of the ſaid book, but likewiſe by "ſeveral clauſes therein contained, and by "ſuch other proofs as the cauſe, according to "the courſe of Parliament, ſhall require."—On the Committee who were appointed to frame theſe articles, were the Solicitor General Sir Heneage Finch (afterwards Lord Chancellor Nottingham) Sir Edward Turner (afterwards Chief Baron) Mr. Anneſly, Mr. Hollis, Serjeant Glynn, Serjeant Maynard, and Serjeant Rainsford.

† Theſe articles ſtate all the circumſtances of the violence offered to Mr. Tayleur by the Lord Mordaunt; and conclude, "All and "every which proceedings are contrary to "the Great Charter, and other laws and ſta-"tutes of this realm, and the rights and liber-"ties of all the Commons and freemen of "England, and of dangerous conſequence and "example if unredreſſed."—There is a clauſe, reſerving the right of the Commons to exhibit other articles, or any other impeachment or accuſations (as the caſe ſhall, according to the courſe of Parliaments, require); and praying, That Lord Mordaunt may be called to anſwer the ſaid ſeveral crimes and miſdemeanors.

‡ See before, p. 111, the proceedings that were had in the next ſeſſion, on Mr. Tayleur's exhibiting another petition and further articles upon this ſubject.

Lord Clarendon by Mr. Seymour *, into heads, ought not to be preceded by an examination of witneſſes †. So upon the report from the Committee appointed to draw up heads, on the 6th of November, a motion was made, and queſtion put, "That the heads of the "accuſation brought in againſt the Earl of Clarendon, be referred "to a Committee, to take the proofs and report," but paſſed in the negative ‡.—The heads are all then read §, as reported from the Committee, and debated generally on the 6th, 7th, and 8th of November; when the Houſe come to a reſolution, "That this "Houſe have ſufficient inducement to impeach the Earl of Cla-"rendon."—The heads were then read, one by one; and the opinion of the Houſe taken upon each ‖.—After which, on the 11th of

* It is ſaid in Grey's Debates, Vol. I. p. 15, that Mr. Seymour, after having charged the Lord Chancellor in general, thus expreſſed himſelf, "He makes the earth groan by his build-"ing, as we have done under his oppreſſion." This expreſſion referred to a very large houſe which Lord Clarendon had lately built. "Some "called it Dunkirk Houſe, intimating that it "was built by his ſhare of the price paid by "the French for Dunkirk."—Burnet's Hiſtory, 1ſt vol. p. 249. Is it not extraordinary, that there are not now remaining the ſmalleſt traces of this magnificent palace? which Biſhop Burnet ſays, coſt £. 50,000 in building. It appears from a Plan of London, (which is preſerved in the library of the Society of Antiquaries,) that this Houſe ſtood on the North ſide of Piccadilly, exactly oppoſite St. James's-ſtreet; and occupied a very great ſpace, which is now filled by Dover-ſtreet and Albemarle-ſtreet, and the buildings up to the Weſt ſide of Bond-ſtreet.—Theſe ſtreets are deſcribed in Maps of London, publiſhed as long ago as in the reign of King William; Lord Clarendon's houſe could therefore have ſtood but for a very few years.

† See this debate in the State Trials, Vol. II. p. 554.

‡ The diviſion was 194 to 128, againſt referring the articles to a Committee.—Sir Edward Seymour, and Sir Thomas Oſborne afterwards Duke of Leeds, were the tellers for the majority.

§ It appears, from the proceedings in Vol. II. of the State Trials, p. 558, that, as theſe heads were ſeverally read, ſome Member of the Houſe of Commons, in his place, ſtated to the Houſe, "That ſeveral perſons had under-"taken to make that head good,"—or, "that "the Member had heard this, from a certain "great Lord"—or, "that this was too pub-"lic to ſtand in need of proof"—or, in one inſtance, "that the Member did not doubt, "but it will be made out."

‖ This does not appear ſo clearly from the entries in the Journal, as from the proceedings in the State Trials, Vol. II. p. 562, et 563.—See alſo the debates upon this matter in Vol. I. of Grey's debates, p. 14 to 37.—From all which it appears, That Mr. Seymour having, on the 26th of October, charged the Earl of Clarendon, *vivâ voce*, with many great crimes, and a debate ariſing, what the proceeding ought to be, a Committee to ſearch precedents was appointed, in conſequence of this debate.—See, particularly, in Vol. II. of the State Trials,

of November, upon debate of the whole matter, the Houſe reſolve, "That an impeachment of treaſon, and other high crimes and "miſdemeanors, be carried up to the Bar of the Houſe of Lords, "againſt the Earl of Clarendon."

23. On the 25th of November, 1669, a petition of Sir Edward Fitz-Harris and a Mr. Alden, with ſeveral articles of impeachment againſt the Earl of Orrery, of "High Treaſon," and other high crimes and miſdemeanors, were read *.—The Houſe reſolving that this charge againſt Lord Orrery contains treaſonable matter †, he is ordered to be ſent for in cuſtody of the Serjeant.—On the 1ſt of December ‡ he attends; the articles are read, one by one; and on reading each particular article, he delivers in his anſwer thereto—and being withdrawn, a queſtion is put, That a day be appointed for the accuſers to produce witneſſes to make good the charge—but paſſed in the negative; and the Houſe order, that this accuſation ſhall be left to be proſecuted at law.

24. On the 15th of January, 1673, articles of treaſonable and

Trials, p. 554, the ſpeeches of Sir Thomas Littleton, Mr. Serjeant Maynard, and Mr. Vaughan, upon the queſtion, "Whether the "impeachment ſhall be firſt carried to the "Lords, or, whether witneſſes to ſupport it "ſhall be firſt examined?"

* Neither the petition nor the articles are entered in the Journal; but it appears from Grey's Debates, that Lord Orrery was at this time Preſident of Munſter, and that he and the Duke of Ormond were upon ill terms; and that this was the ſecret cauſe of this proceeding—Lord Orrery was alſo a Member of the Houſe of Commons.—The accuſation was, "for raiſing money by his own authority, and "threatening, That if the King would not "come into his meaſures, he had 50,000 "ſwords to compel him."—Grey's Debates, Vol. I. p. 182.—See in Mr. Solicitor General Finch's ſpeech, p. 185, his diſlike of impeachments, "He never knew much good done in "Parliaments, where many impeachments "were."

† It is ſaid in Grey's Debates, Vol. I. p. 184, but is not entered in the Journal, "That during this debate, no Member was ſuffered to go out, without leave aſked; and when obtained, he was enjoined by the Speaker not to communicate any thing that paſſed in the Houſe." See the note in Grey's Debates, Vol. I. p. 186, explaining the hiſtory of this buſineſs.

‡ It appears from the Journal of the 1ſt of December, That he was placed in his ſeat, near the Bar; and being infirm, and unable to ſtand, was permitted to give in his anſwers, ſitting in the Houſe.

other

other crimes of high miſdemeanors, againſt the Earl of Arlington, Principal Secretary of State, being opened and preſented to the Houſe*, they were delivered in at the Clerk's table, and read.—Lord Arlington, by letter to the Speaker, deſires to be heard †; he is called in, and ſeveral queſtions being propoſed to him from the Chair, he is heard; and, being withdrawn, the Houſe debate this matter on the 16th; and on the 17th witneſſes are examined.—On the 20th it is referred to a Committee to conſider of the articles, and to report what matter is therein contained, and can be proved, that is fit for an impeachment; and they have power to ſend for perſons, papers, and records.—On the 17th of February, the Chairman of the Committee reports, That the Committee were under difficulties, and deſire the direction of the Houſe, Whether proofs ſhould be made before the Committee, or whether ſome one Member undertaking to produce perſons to prove what is alleged, ſhall be admitted as

* It appears from Grey's Debates, Vol. II. p. 270, that theſe articles were preſented by Sir Gilbert Gerrard.—In p. 275, is the ſubſtance of Lord Arlington's Defence, which he delivered in the Houſe of Commons.—See alſo in the ſame volume, the debates on the ſeveral days, whilſt this matter was under conſideration.—It appears from theſe debates, and from thoſe relating to the Duke of Buckingham, in the ſame book, p. 257, 258, that the term "*Cabal*" was (from taking the initial letters of their names) generally uſed, in the Houſe of Commons, to diſtinguiſh this ſet of miniſters; and, as Burnet obſerves, in Vol. I. p. 308, became from thence a technical word.—This junto conſiſted of *Clifford*,—*Aſhley*—*Buckingham*—*Arlington*—*Lauderdale*.—Hume obſerves, "Never was there a more dangerous "Miniſtry in England, nor one more noted "for pernicious counſels."

† The Duke of Buckingham having, at his requeſt, been admitted into the Houſe of Commons, and heard on the 14th of January, and Lord Arlington on the 15th (for the forms of which proceeding ſee Grey's Debates, Vol. II. p. 248) induced the Lords, on the 15th of January, 1673, to refer it to the Committee of Privileges to ſearch the Journal, what hath been formerly the practice in ſuch caſes:—On the 20th of January, the Committee report, "That their Lordſhips have ſearched, and "peruſed ſeveral precedents, and thereupon "conceive, that it may deeply intrench into "the privileges of this Houſe, for any Lord "of this Houſe to anſwer an accuſation in the "Houſe of Commons, either in perſon, or by "ſending his anſwer in writing, or by his "counſel there."—Upon ſerious conſideration had thereof, and peruſal of the ſaid precedents, it is ordered, "That for the future no Lord "ſhall either go down to the Houſe of Com-"mons, or ſend his anſwer in writing, or ap-"pear by counſel, to anſwer any accuſation "there, upon the penalty of being committed "to the Black Rod, or to the Tower, during "the pleaſure of this Houſe." And it is ordered, That this order be added to the Roll of the Standing Orders.

proof?—The Houſe reſolve, That it be re-committed to the Committee to proceed upon the articles, head by head; and to report particularly to the Houſe, what proofs or inducements ſhall be offered to the Committee, fit for an impeachment, upon every head of the ſaid articles*.

25. On the 26th of April, 1675, a charge or impeachment againſt Thomas Earl of Danby, Lord High Treaſurer of England, containing ſeveral offences, crimes, and miſdemeanors of a very high nature, being preſented and opened to the Houſe, and afterwards brought in, and delivered at the Clerk's table—they are read†.—The Houſe then reſolve to proceed, head by head, and to hear ſuch proofs, inſtances, and circumſtances, relating to each article, as are neceſſary to an impeachment.—On the 27th and 30th of April, and 3d of May‡, the Houſe hear evidence, and examine witneſſes; and, upon the queſtion ſeverally put on each article, "Whether any fit matter doth appear, in the examination "of this article, to impeach the Lord Treaſurer?" they were all paſſed in the negative.

26. On the 1ſt of November, 1678, after a long examination into the matter of the Popiſh Plot, the Houſe reſolve that they

* Nothing further appears to have been done in this accuſation.

† It appears from Grey's Debates, Vol. III. p. 41, that theſe articles were opened and preſented by Sir Samuel Barnardiſton.—The charges againſt Lord Danby were, (1.) The violating the method of the Exchequer; (2.) For cauſing a perſon to be illegally arreſted and detained, with an intent to procure a great heireſs to be married to his own ſecond ſon. (3.) With receiving ſeveral large ſums of money, which were waſtefully ſpent, though the King's debts remained unpaid, the ſtores unfurniſhed, and the navy unrepaired. (4.) With ſtopping the legal payments due in the Exchequer. (5.) The aſſuming to himſelf the management of the Iriſh affairs, though his own office of Treaſurer was full of great and neceſſary employment. (6.) By procuring great gifts and grants from the Crown. (7.) Uttering this arbitrary expreſſion in contempt of the law, "That a new proclamation is better than an "old act."—There is much debate about the mode of proceeding, "Whether to examine "into the proofs, or to be ſatisfied with the "undertaking of Members to prove them?"

‡ See what paſſed upon theſe examinations in Grey's Debates, Vol. III. p. 50, to p. 96.

will proceed by way of impeachment againſt the Lord Arundel of Wardour; and appoint a Committee to prepare and draw up articles of impeachment.—On the 5th of December, the Houſe reſolve to impeach the ſaid Lord Arundel, Earl of Powys, Lord Bellaſyſe, Viſcount Stafford, and Lord Petre, of treaſon, and other high crimes and miſdemeanors *.—Meſſages are ſent immediately to

* It appears from Grey's Debate, Vol. VI. p. 320, that the Grand Jury had already found Bills of indictment of high treaſon againſt theſe five Lords.—Theſe Bills of indictment were brought into the Houſe of Lords on the 29th of April, 1679, by a Writ of Certiorari, iſſued by order of the Lords.—In the debate, Whether to leave the proceedings againſt theſe Lords to trial by the common law, or, to proceed by impeachment? Mr. Solicitor General Winnington ſays, "If you go not by way of impeachment, the King and the people will loſe their right, by the 25th of Edward III.: That ſtatute having great regard to the ſafety of men, does declare what ſhall be treaſon for the future; which is only a declaration of the common law, what was treaſon before that ſtatute.—It does not alter the common law, but enumerates many particular caſes, and leaves the declaration of more treaſons, than are particularly expreſſed in that ſtatute, to Parliament.—Whether trial or impeachment be the elder brother I cannot tell; but, I believe, trial of a Peer in Parliament is more ancient than by indictment."

Serjeant Maynard ſays, "If this had been only to murther the King, then the proſecution might have gone on in the ordinary courſe of juſtice; but this plot is to deſtroy religion and the government—I do not know but theſe things, if queſtioned in Parliament, may be declared treaſon.—There may be ſuch exorbitant crimes, fit for Parliament to conſider, that no ordinary Judge nor Jury can take notice of; but Parliament may.—It clearly appears, that there was a deſign to overthrow law, religion, and the government; and that, in Parliament, would be declared treaſon.—Therefore it is better that way, than in the ordinary way of juſtice.—This concerns all the nation, and ſo is more proper for an impeachment."

Sir Edward Seymour, the Speaker, ſays,—"The firſt ſtep you make in this matter is, to determine your reſolution to impeach—The next is, the perſon whom you will impeach. —Then you are actually to go to the Lords Bar, and accuſe the perſons, and acquaint the Lords, that you will take time to make your charge out: and, if the perſons accuſed be at large, to deſire that they may be in cuſtody—But theſe Lords being in cuſtody already, that is out of doors.—But you ſend not to other courts to ſtop proceedings—all courts do ſtop of courſe.—The Lords cannot proceed originally to trial, unleſs the without-doors matter be certified to them from the court where the indictment was found.—But if an impeachment be brought up from hence, all proceedings below ceaſe."—Grey's Debates, Vol. VI. p. 323, et ſubſ.—The clauſe in the Statute of Treaſons, the 25th Edward III. ch. 2. to which the Solicitor General and Mr. Serjeant Maynard refer, is expreſſed in theſe terms: "And becauſe that many other like caſes of treaſon may happen, in time to come, which a man cannot think or declare at this preſent time; it is accorded, That if any other caſe, ſuppoſed treaſon, which is not above ſpecified, doth happen before any juſtices, *the juſtices ſhall tarry*, without any going to judgment of the treaſon, *till the* "cauſe

to impeach theſe Lords, ſeverally, at the Bar of the Houſe of Lords; and that the Commons will, within convenient time, exhibit articles of charge: the Committee formerly appointed to prepare the articles againſt the Lord Arundel, are then ordered to prepare and draw up articles againſt the other Lords.—This Committee are empowered to ſend for perſons, papers, and records.

27. On the 19th of December, 1678, the Committee appointed to draw up the articles of impeachment againſt the Lord Danby, are empowered to ſend for perſons, papers, and records, and to receive any further information or evidence.—On the 21ſt of December, the articles are reported *; and being read, a queſtion is put upon each article; they are then ordered to be ingroſſed, with a ſaving liberty to exhibit other articles, and that he may be ſequeſ-

" *cauſe be ſhewed and declared* before the King " and his Parliament, whether it ought to be " judged treaſon or other felony." There have been different opinions as to the true conſtruction of this clauſe, with regard to the mode of applying to, and obtaining the opinion of the King and the Parliament, upon any caſe that ſhall occur; and the operation, which ſuch opinion, when obtained, ſhould have upon ſuch particular caſe. See Coke's 3 Inſt. p. 21, Title " Petit Treaſon." Sir M. Hale ſays, " In my opinion, if new caſes hap- " pen in the future, that have not an expreſs " reſolution in point, nor are expreſsly within " the words of 25 Edward III. though they " may ſeem to have a parity of reaſon, it is " the ſafeſt way, and moſt agreeable to the " wiſdom of that great Statute, *firſt to conſult* " *the Parliament*, and have their *declaration*." And again, " The authoritative deciſion of " theſe *caſus omiſſi* is reſerved to the King and " his Parliament, and the moſt regular and " ordinary way is to do it *by a Bill declara-* " *tively*."—Hale's Pleas of the Crown, Vol. I. p. 132 and 259, ch. 14th and 24th.—See alſo Lord Chief Juſtice Bridgeman's ſpeech in the Houſe of Lords, on the 14th of July, 1663, on this queſtion, " Whether, on accuſation for " a crime that is not treaſon in præſenti, if " ſuch a Parliamentary declaration ſhould paſs, " it would relate to the time paſt." State Trials, Vol. II. p. 553, where (I ſuppoſe by miſtake) it is ſaid the opinion of the Judges was delivered by the Lord Chief Juſtice Forſter: The Journal of the Lords of the 13th and 14th of July, 1663, expreſsly mention the Lord Chief Juſtice Bridgeman, of the Common Pleas.

* See in Grey's Debates, Vol. VI. p. 366, the debate upon this report, particularly whether there had not been an irregularity in not aſſigning any time or place for the Committee to meet.—They had met, nine of them out of twenty-two, at Mr. Williams's chambers in Gray's Inn—And upon this, a motion was made, " That the articles be re-committed," but paſſed in the negative, 179 to 135.—See Sir Harbottle Grimſtone's ſpeech, p. 379, as to what is treaſon at the common law, declarable by Parliament, though not one of the caſes recited in the ſtatute 25th Ed. III.

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tered from Parliament, and committed to ſafe cuſtody.—On the 23d, the ſaving clauſe is read, and ingroſſed, and the articles are delivered on that day at the Bar of the Lords, by Sir Henry Capell, together with the meſſage of impeachment.

28. On the 20th of November, 1680, Sir Gilbert Gerrard acquaints the Houſe, that he had articles of impeachment of high crimes and miſdemeanors and offences, againſt Edward Seymour, Eſquire, a Member of this Houſe, which he delivered in at the Clerk's table, and they were read *; Mr. Seymour is ordered to have a copy of the articles, and to deliver in his anſwer by the 25th of November †.—On the 25th, the articles are read, one by one, and Mr. Seymour makes his anſwer to each particular article in his place, and then withdraws.—The articles are debated ſeparately on the 25th and 26th of November, and the Houſe reſolve ‡, That there is matter ſufficient in each article to impeach Mr. Seymour. —A Committee is accordingly appointed to prepare the impeachment, who have power to ſend for perſons, papers, and records ‖.—On the 17th of December, Sir W. Pultney reports from this Com-

* Theſe articles againſt Mr. Seymour, related to his conduct as Treaſurer of the Navy, and for receiving a ſum of money annually of £. 3000, whilſt he was Speaker, over and above his ſalary as Treaſurer of the Navy.

† See the debate upon, Whether Mr. Seymour ſhould be admitted to give in any anſwer, in writing, to the Houſe of Commons.—Grey's Debates, Vol. VIII. p. 41.

‡ Before any queſtion is put upon the firſt article, a motion is made, That the conſideration of theſe articles of impeachment be referred to a Committee, but paſſed in the negative. —See in Grey's Debates, Vol. VIII. p. 88, what paſſed upon this queſtion, particularly Mr. Finch's ſpeech, who ſays, "There is a "conſiderable difference between impeach-"ments of treaſon and miſdemeanor; prece-"dents are expreſs in the caſe, as that of Sir "W. Penn's; and you will hardly find one "precedent of miſdemeanor that has gone in "a contrary way, but has been examined at a "Committee." See Silas Titus's ſpeech, p. 94, againſt referring the articles to a Committee.

‖ A Committee is alſo appointed to conſider of precedents concerning the committing a Member to cuſtody, when impeached in Parliament.—On the 17th of December, this Committee make their report.—The report is not entered in the Journal, but is in Grey's Debates, Vol. VIII. p. 175; with the debate upon thoſe precedents.—It appears from p. 181, that ſeveral Members immediately offered to become ſecurity for Mr. Seymour's forthcoming, to anſwer to the impeachment.

mittee,

mittee, That they had put the articles into the form of an impeachment; they were then twice read, and ordered to be ingroſſed. And then Mr. Seymour is ordered to be taken into the cuſtody of the Serjeant, for ſecuring his forthcoming to anſwer to the impeachment. And the Serjeant is impowered to take ſecurity for his forthcoming.

29. On the 3d of January, 1680, the articles of impeachment againſt Sir W. Scroggs, Chief Juſtice of the Court of King's Bench, are reported *.—They are debated on the 5th of January, and a queſtion is put upon each article, Whether Sir W. Scroggs be impeached upon the ſaid article? They are then ordered to be ingroſſed.—On the 7th of January, the ingroſſed articles are read, and carried up to the Lords by the Lord Cavendiſh.—The Commons in theſe articles impeach Sir W. Scroggs of "High Treaſon" againſt the King, his crown and dignity, and other high crimes and miſdemeanors †.

* In the proteſtation, ſaving to the Commons the liberty of exhibiting, at any time hereafter, any other accuſation or impeachment againſt Sir W. Scroggs—the Commons pray, "That the ſaid Sir W. Scroggs may be "put to anſwer to all and every the premiſes, "and may be committed to ſafe cuſtody; and "that ſuch proceedings, examinations, trials, "and judgments, may be upon him had and "uſed, as is agreeable to law and juſtice, and "the courſe of Parliaments."

† See in the State Trials, Vol. VII. p. 488, a debate, on the 5th of January, on the conſtruction of the clauſe in 25 Ed. III. which reſerves to Parliament the power of declaring, whether any other caſe, not recited in that act, but ſuppoſed to be treaſon, be treaſon or felony—particularly the ſpeeches of Mr. Daniel Finch, afterwards Earl of Nottingham, and Sir Francis Winnington, who differ in opinion, Whether this declaration ſhould be made by Bill, (that is, by Act of Parliament) or by the Lords, on the accuſation of the Houſe of Commons?—Serjeant Maynard and Mr. Powle take a conſiderable part in this debate, (as appears from Grey's Debates Vol. VIII. p. 238—249.) Serjeant Maynard ſays, "What treaſon is, no man can "define nor deſcribe.—The ſtatute of 25 Edw. "III. does not do it; but treaſons are enu-"merated.—If another offence be committed, "the Parliament ſhall judge, whether it de-"ſerves the puniſhment of treaſon.—What-"ever offence deſerves the puniſhment of a "traitor, the Parliament may impeach, and "the Lords judge accordingly.—Here is a "deſign and intention to deſtroy the nation "and our religion; and people combine to "form companies and raiſe arms, and intend "to deſtroy the Lords and Commons: think "you, that this cannot be adjudged treaſon? "This caſe we now debate, is no caſe enume-"rated

" rated in the ſtatute 25 Edw. III. but take " away that power of declaring treaſon in " Parliament, and you may all have your " throats cut." Mr. Powle ſays, " It is re- " ſolved on all hands, that the declaratory " power of treaſon remains in Parliament. " In the 11 Richard II. four or five Judges " were impeached for ſigning an extrajudicial " opinion againſt the Parliament." (See this proceeding in p. 53 of this Vol.) " I take " all thoſe precedents to be legal precedents, " and not to be excepted againſt.—I never " heard, but that the ſubverting the funda- " mental laws was *proditorie* in an impeach- " ment."—Neither Mr. Finch, nor Sir Francis Winnington, nor Serjeant Maynard, nor Mr. Powle, nor any other Member in that debate, raiſe a doubt, Whether, if the crime Sir W. Scroggs had committed, amounted to high treaſon, he was not a proper object, though a Commoner, of an impeachment before the Lords.

## III. *Form of delivering the Charge.*

1. ON the 1ſt of March, 1620, upon debate and conſideration, touching the form of proceeding againſt Sir Giles Mompeſſon, whoſe miſconduct in ſeveral inſtances had appeared in evidence at the Committee of Grievances, it was reſolved to go to the Lords, to propoſe to them, "That, ſearching into grievances, "the Commons had found one of ſuch a nature, and ſo high a "ſtrain, both againſt the King and Kingdom, as never the like."—Sir Edward Coke to be the meſſenger, and to deſire a Conference upon this ſubject.—On the 3d of March, Sir Edward Coke reports, That he had been at the Lords, and demanded the Conference*; and had told the Lords, that the Commons had taken this courſe, (1.) Becauſe it was warranted by precedent. (2.) Becauſe they had a greater power to puniſh him. (3.) That they had a great intereſt in reſpect of their noble families and poſterities.—The Lords agree to the Conference.

2. On the 17th of March, 1620, reſolved, after debate, and ſeveral propoſitions made, That the complaints againſt Lord Chancellor Bacon, which had appeared upon examination before the Grand Committee for Courts of Juſtice, ſhould be ſet down in writing, and preſented to the Lords at a Conference.—This Con-

* It appears, from the Lords Journal of the 13th of March, 1620, that at this Conference the Lords demanded of the Commons the proofs of the grievances of which they complained, which the Commons delivered at another Conference, on the 15th of March.



ference

ference is held on the 19th of March *.—On the 21ſt of March further heads of charge are ſent †.

3. The charges againſt the Earl of Middleſex, Lord High Treaſurer, are delivered at a Conference on the 16th of April, 1624, and are opened at large, with reference to the proofs, by Sir Edward Coke and Sir Edwyn Sandys ‡.

4. On the 29th of April, 1626, Mr. Pym reports, that the Committee thought the fitteſt way to tranſmit the charges againſt Mr. Mountague to the Lords, was by way of Conference.—But Sir Nathaniel Rich moves to have it done by Mr. Pym, not at a Conference, but by meſſage § to be delivered at the Bar in the Lords Houſe, where it may be more public.—And it was ſo ordered, to be delivered by Mr. Pym by way of meſſage, as ſoon as he can be ready: and the exceptions to the books to be left there in writing. —On the 14th of June, the articles are ordered to be ingroſſed.

5. On the 2d of May, 1626, it is reſolved to tranſmit to the Lords the charges againſt the Duke of Buckingham.—On the 3d, eight Managers are appointed, with two Aſſiſtants to each of them, who are to agree upon the parts, and divide the buſineſs between

* See in the Lords Journal of the 20th of March, the Lord Treaſurer Mandeville's report of this conference.

† Which ſee in the Lords Journal of the 22d of March.

‡ After ſtating all the charges, Sir Edwyn Sandys concludes, "Theſe complaints, my "Lords, are of a high Lord, the Lord Treaſurer: but your Lordſhips are higher than "he; the King higher; and God higher than "all; whoſe juſtice your Lordſhips execute; "which juſtice the Commons humbly and inſtantly demand of your Lordſhips, againſt "theſe oppreſſions."—See the Lords Journal the 16th of April, 1624.

§ Sir Nathaniel Rich, adds, "That this "was the ancient way, and ſo done in the "12th Jac. by Sir Edward Hobby, againſt the "Biſhop of *Durham*."—This muſt be a miſtake of Sir N. Rich's, or of the Journal, as there was at that time no proceeding againſt the Biſhop of Durham.—But it means the Biſhop of *Lincoln*: as there was, on the 25th of May, 1614, in the 12th of Jac. Iſt, a meſſage ſent to the Lords by Sir Edward Hobby, complaining of a ſpeech of that Prelate.—See this caſe at length, in the 1ſt Vol. of this Work, p. 196. *

them.—On the 6th of May, theſe ſeveral parts are arranged: And on the 8th, a meſſage is ſent to the Lords, to deſire a Conference touching the impeachment and accuſation of a great Peer.—The Lords decline a Conference, but appoint a meeting between a Committee of both Houſes in the Painted Chamber *.—It is then determined, that at this meeting the articles ſhall be read, according to the direction of the charges, by one of the Aſſiſtants, and that then each Manager ſhall amplify and aggravate his part, and ſhall leave the proofs with the Lords.—On a motion made, That the Lords ſhall be moved to ſequeſter the Duke, this debate is adjourned till the next day, when, on the 9th of May, the Houſe reſolve, upon a diviſion of 225 to 106, to move the Lords, That the Duke of Buckingham may be committed to priſon †.

6. On the 11th of November, 1640, reſolved, That a meſſage be ſent from this Houſe to the Lords, to accuſe Thomas Lord Wentworth, Earl of Strafford, Lord Lieutenant of Ireland, of high treaſon, and to deſire that he may be ſequeſtered from Parliament, and be committed; and that within ſome convenient time this Houſe will reſort to their Lordſhips with particular accuſations and articles againſt him ‡.—Theſe articles, when prepared and ingroſſed, are

* See, in the Lords Journals of the 13th and 15th of May, the report of the Conference at length, as opened by the ſeveral Managers, with the articles of impeachment; at the end of which is a ſchedule of all the grants and gifts from the Crown to the Duke of Buckingham, for himſelf or to his immediate uſe. See alſo the Parliamentary Hiſtory, Vol. VII. p. 44. The report of this Conference in the 3d Vol. of the Lords Journals, from p. 595 to p. 627, is extremely curious and worth reading.

†. See the form of this meſſage, by Sir Nathaniel Rich, in the Lords Journal of the 11th of May.—When this meaſure was firſt propoſed in the Houſe of Commons, on the 8th, it was ſuggeſted, That the motion for commitment had better not be grounded on theſe articles, but upon the petition of Lord Digby, which had been preſented to the Houſe of Commons upon the 1ſt of May, and to which articles were annexed, containing high treaſon.—The Lords anſwer to the meſſage for commitment is, That they will in due time take it into conſideration, and return an anſwer by meſſengers of their own.

‡ See, in the Lords Journal of this day, the proceedings of the Lords upon this meſſage.—They preſently commit Lord Strafford to the cuſtody of the Gentleman Uſher, and ſequeſter

are delivered to the Lords by Mr. Pym, at a Conference on the 25th of November *.

7. A ſimilar meſſage is ſent to the Lords, on the 18th of December, 1640, reſpecting Archbiſhop Laud.—He is immediately ſequeſtered from Parliament, and committed to the Gentleman Uſher; it is not ſaid, that he received this judgment, as the Lord Strafford did, upon his knees; but only that he was called to the Bar as a delinquent.—When the articles againſt him are delivered at a Conference, on the 26th of February, 1640, the Archbiſhop is immediately committed to the Tower †.

8. On the 12th of February, 1640, reſolved, That Sir Robert Berkley, Knight, one of the Judges of the King's Bench, ſhall be accuſed ‡, in the name of all the Commons of England, of "High "Treaſon,"

queſter him from Parliament; and this determination of the Lords is pronounced againſt him, kneeling at the Bar.—The Lords then ſend a meſſage to the Commons, by the two Chief Juſtices, to acquaint them with what they have done.

* Mr. Pym, before he went up to the Lords, on the 25th of November, made a ſhort declaration of what he intended to ſay, upon the delivery of the articles. On his return, it is reſolved, "That Mr. Pym have the thanks "of the Houſe, for his well delivering of the "charge againſt the Earl of Strafford." See the proceedings againſt Sir G. Ratcliffe, on the 29th and 31ſt of December, 1640.—He is accuſed by meſſage, and the articles are delivered at a Conference.

† Archbiſhop Laud continued a priſoner in the Tower, till he was brought to his trial in March, 1643–4. After the trial was over, no judgment was pronounced, but he was condemned by an *Ordinance*, which paſſed the Lords, on the 4th of January, 1644–5. It is ſaid, that only ſix Lords were preſent at the paſſing of this Ordinance.—See Biog. Brit. title, *Laud*; and the Lords Journals of the 4th of January, where the Ordinance is printed at length; and introductory to it, is what was urged at the Conference, on the part of the Commons, to ſhew, (1.) That what the Archbiſhop had done was high treaſon againſt the realm; and (2.) That though no inferior judge could judge of this, it was reſerved, by the 25th Edward III. for the declaration of Parliament.—He was executed on the 10th of January, 1644–5, after a confinement of four years.—Welwood, after deſcribing his faults and infirmities, adds, "He was however cer-"tainly, in ſpite of malice, a man of an ele-"vated capacity and vaſt deſigns; a great "encourager of learning and learned men; "and ſpared no pains nor coſt to enrich Eng-"land with ſuch a noble collection of books "and manuſcripts in moſt languages, as look-"ed rather like the bounty of a king than of "a ſubject." Memoirs, p. 52.

‡ This was an impeachment of a Commoner before the Lords "for a capital offence."—

No

" Treaſon," and other great miſdemeanors;—and that a meſſage be forthwith ſent to the Lords for that purpoſe, and that he may be forthwith committed; and that the Houſe will, within ſome convenient time, reſort to their Lordſhips with particular accuſations and articles againſt him.—The Lords anſwer, That they had committed him to ſafe cuſtody *.

9. On

No doubt ſeems to have been entertained, at that time, of the legality of this proceeding, either by the Lords, or Commons, or by Mr. Selden, Mr. Whitelocke, or Mr. Maynard, who were all at that time Members of the Houſe of Commons.—Mr. Hyde, afterwards Earl of Clarendon, makes the report of the ſtate and nature of the charge againſt Judge Berkley; and, upon this report, the Houſe of Commons immediately reſolve upon the impeachment.—And when Lord Clarendon, in the Hiſtory of the Rebellion, Vol. II. p. 290, mentions this event, he never ſuggeſts a hint, that the Commons, in impeaching a Commoner for a capital offence, were doing, what by law they had no right to do.—Judge Berkley himſelf (who was a good lawyer) when he is called upon by the Lords, on the 12th of February, and has leave to ſpeak, touching the accuſation of treaſon that had been charged againſt him by the Houſe of Commons, ſubmits himſelf to the pleaſure of the Houſe.—Whitelocke ſays, " That Max-" well, the Uſher of the Black Rod, came to " the King's Bench, when the Judges were " ſitting, took Judge Berkley from off the " Bench, and carried him away to priſon; " which ſtruck a great terror in the reſt of his " brethren then ſitting in Weſtminſter Hall, " and in all his profeſſion."—He adds, " that " this Judge was a very learned man in our " laws, and a good orator and judge; mode-" rate in his ways, except his deſires of the " court favour." Whitelocke's Memoirs, p. 39.—See what is ſaid before upon the ſubject of the Commons impeaching a Commoner for a capital offence, in p. 54 and 75, 76, of this volume.

* The articles of charge againſt the ſix Judges, one of which, againſt Sir Robert Berkley, was for High Treaſon, were delivered to the Lords at a Conference, on the 6th of July, 1641.—See in the Lords Journal the ſpeech of Mr. Hollis upon this occaſion.—The Judges were, Sir John Bramſton, Lord Chief Juſtice of the King's Bench—Sir Robert Berkley, one of the Juſtices of that Court—Sir Francis Crawley, one of the Judges of the Common Pleas—Sir Humphrey Davenport, Lord Chief Baron of the Exchequer—Sir Richard Weſton, and Sir Thomas Trevor, Barons of that Court.—Mr. Waller's ſpeech, who was one of the Managers of this Conference, is printed at the end of his Poems—in which, ſpeaking of the opinion given by Judge Crawley, " That the votes and reſolutions of " Parliament againſt Ship-money were void; " and that it is not in the power of a Parlia-" ment to aboliſh that judgment." Mr. Waller concludes, " To him, my Lords, who has " thus played with the power of Parliament, " we may well apply what was once ſaid to " the Goat browſing upon the Vine,

Rode, caper, vitem; tamen hinc, cum ſtabis ad aras,
In tua, quod fundi, cornua, poſſit, erit—

Mr. Hyde's concluſion is, " My Lords, if the excellent envied conſtitution of this kingdom hath been of late diſtempered, your Lordſhips ſee the cauſes; if the ſweet harmony between the King's protection and the ſubject's obedience hath unluckily ſuffered interruption; if the royal juſtice and honour of the beſt of Kings hath been miſtaken by his people; if the duty and affection of the moſt faithful and loyal nation hath been ſuſpected by their gracious ſovereign; if, by theſe miſre-

preſentations

9. On the 4th of Auguſt, 1641, the impeachment of ſeveral Biſhops having been agreed to, Mr. Serjeant Wylde is ordered to carry it up; which he does, and delivers it at the Bar of the Houſe of Lords.—On the 8th of Auguſt, the Commons agree to ſend a meſſage, to deſire, That the Biſhops which have been impeached by this Houſe, may be ſequeſtered from Parliament—but this meſſage does not appear from the Lords Journals to have been delivered. —The Lords, however, upon the 17th of Auguſt, reſolve, That ſuch of the Biſhops as are impeached, ſhall not ſit in the Houſe when the merits of the cauſe are in debate; but that, whilſt the manner of proceeding in the cauſe is in debate, the Biſhops may ſit, but not vote.

10. The Lords having expreſſed a doubt, at a Conference, Whether the charge againſt the Biſhops was not too general for them to make anſwer to, recommended it to the Commons to form a particular charge "in writing" upon the verbal charge which they brought.—This matter is referred to a Committee, upon the 11th of Auguſt, 1641, and on the 13th Mr. Serjeant Wylde reports a more particular charge; and the Houſe reſolve, That this further impeachment ſhall be delivered at the Bar, "in the ſame manner as "the laſt was," and the like prayer made, that they may anſwer in preſence of the Commons.

11. On the 18th of December, 1641, a meſſage is brought to the Lords by Mr. Goodwin, to let their Lordſhips know, That he was commanded by the Knights, Citizens, and Burgeſſes, for the

preſentations and theſe miſunderſtandings, the King and the people have been robbed of the delight and comfort of each other, and the bleſſed peace of this Iſland hath been ſhaken and frighted into tumults and commotion; into the poverty, though not into the rage of war; as a people prepared for deſtruction and deſolation —Theſe are the men, that, actively or paſſively, by doing or not doing, have brought this upon us—"Miſera ſervitus, falſo pax vocatur—Ubi "judicia deficiunt, incipit bellum."—Theſe extracts are given here, to induce the curious reader to peruſe the whole of theſe ſpeeches, as inſerted, in Ruſhworth's Collection, Vol. IV. p. 318, et ſubſ.

Commons

Commons now aſſembled in Parliament, to accuſe, and that, in the name of the Houſe of Commons, and of all the Commons of England, he did accuſe Daniel O'Neile of "High Treaſon;" and to deſire that their Lordſhips would commit him to ſafe cuſtody—and that, in convenient time, the Houſe of Commons will bring up the particular charge againſt him.—On the 23d of December, the articles againſt him are agreed to, and ordered to be delivered at a Conference.

12. On the 30th of December, 1641, the Lords having, at a Conference, communicated to the Commons a paper, intitled "The "Petition and Proteſtation of all the Biſhops and Prelates called by "writ to attend in Parliament, and preſent about London and "Weſtminſter," and ſigned by twelve of them—the Commons immediately reſolve, That theſe twelve Biſhops ſhall be accuſed, in the name of the Commons of England, of High Treaſon, "For "endeavouring to ſubvert the fundamental laws of this kingdom, "and the very being of Parliament."—Mr. Glynn is to accuſe them at the Bar of the Lords, and to deſire, that they may be forthwith ſequeſtered from Parliament, and committed to ſafe cuſtody.—Mr. Glynn reports, the ſame day, That he had performed the ſervice commanded him; and that the Lords had ſent for the perſons accuſed, and would forthwith commit them to ſafe cuſtody*.

13. On the 6th of December, 1660, the Lord Falkland brings to the Bar of the Houſe of Lords, a meſſage, impeaching William Drake, of London, Merchant, of ſedition, for writing, printing, and publiſhing a ſeditious pamphlet, intitled, "The Long Parliament "revived."—The Lords immediately order William Drake to be

* See in the Lords Journal of the 30th of December, the form of calling all theſe Biſhops to the Bar, upon their knees, and the proceedings of the Houſe in their commitment.—And ſee before, in the note p. 134, the account of this Petition and Proteſtation.

apprehended

apprehended as a delinquent by their Serjeant at Arms, and to be brought up the next day, to anſwer the charge.

14. On the 10th of July, 1663, the Earl of Briſtol exhibits in the Houſe of Lords, articles of High Treaſon, and other heinous miſdemeanors, againſt the Lord Chancellor Clarendon, which are read *.—The Lords order a copy of theſe articles to be delivered to the Judges, for them to conſider, "Whether the ſaid charge "hath been brought in regularly and legally? And whether it may "be proceeded in? And how? And whether there be any treaſon "in it?"—On the 13th of July, the Lord Chief Juſtice Bridgman delivers the unanimous opinion of the Judges †, "That a charge of "High Treaſon cannot, by the laws and ſtatutes of this realm, be "originally exhibited by any one Peer againſt another, unto the "Houſe of Peers; and that therefore this charge hath not been "regularly and legally brought in ‡—And if the matters alleged "were true, yet, that there is not any treaſon in them."—On the

* This Lord Briſtol was not the perſon who had been Ambaſſador in Spain, but his ſon, George, much better known by the title of Lord Digby. See his character, very ably drawn by Lord Clarendon, in Vol. III. of Clarendon's State Papers.

† See before, in p. 102, the anſwer of the Judges, in the year 1626, upon a queſtion put to them by the Lords, on a charge made to the Houſe of Lords, by the King, againſt the Earl of Briſtol, for offences committed whilſt he was Ambaſſador in Spain, and for reflecting upon the Duke of Buckingham; "That they "deſired to be excuſed to deliver any opinion "of the precedents of Parliamentary proceed-"ings, for that of them the Lords only are "the judges."

‡ Sir M. Hale, mentioning this caſe, ſays, "By the ſtatute 1 Hen. IV. Ch. 14. all theſe "kinds of appeals in Parliament are wholly "taken away: And therefore, when the now "Earl of Briſtol, prepared articles of High "Treaſon againſt the Earl of Clarendon, "upon a reference to all the Judges, and "upon great conſideration, the Judges unâ "voce returned their opinions, "That thoſe "articles were contrary to that ſtatute of the "1 Hen. IV. and could not be preferred in "the Lords Houſe by the ſaid Earl, or by any "other private perſon." But impeachments "by the Houſe of Commons of High Treaſon "or other miſdemeanors, in the Lords Houſe, "have been frequently in practice, notwith-"ſtanding the ſtatute of 1 Hen. IV. and are "neither within the words nor intent of that "ſtatute; for it is a preſentment by the moſt "ſolemn grand inqueſt of the whole king-"dom." Pl. of the Cr. Vol. II. Ch. 20. p. 150.

14th of July, the Chief Juſtice, at the requeſt of the Lords, did declare the reaſons and grounds which induced the Judges to be of this opinion—Whereupon the Lords concurred with the Judges, in both points, *nemine contradicente* *.

15. When the ingroſſed articles of impeachment againſt the Lord Mordaunt, for illegally impriſoning Mr. Tayleur, are agreed to, on the 22d of December, 1666—a Committee is appointed, of Mr. Prynn, Sir Robert Atkyns, and others, to ſearch the records, and ſee † what method has been formerly uſed in impeachments from this Houſe.—On the 29th of December, a meſſage is ſent to the Lords, to deſire a Conference concerning an impeachment of high crimes and miſdemeanors againſt the Lord Viſcount Mordaunt, a Member of the Houſe of Peers.—It appears from the report of this Conference, by Lord Angleſey, on the 3d of January, that Mr. Seymour delivered the articles there.

16. A doubt aroſe as to the mode of carrying up the charge of treaſon, and other crimes and miſdemeanors, againſt the Earl of Clarendon.—On the 11th of November, 1667, it is reſolved, "That the Houſe carry up the impeachment;" but, on farther conſideration ‡, it is ordered the next day, the 12th of November, "That Mr. Edward Seymour do carry it up." Mr. Seymour, on delivering the impeachment, was alſo commanded to deſire §, "That

* See Lord Clarendon's own account of this tranſaction, in the Continuation of his Life, p. 209. And ſee the reaſons and grounds for this opinion of the Judges, as ſtated in the Lord Chief Juſtice Bridgman's ſpeech, in delivering their unanimous opinion in the Houſe of Lords on the 14th of July, 1663. State Trials, Vol. II. p. 552.

† The Report from this Committee does not appear in the Journals.

‡ It is ſaid in the proceedings againſt Lord Clarendon, in Vol. II. of the State Trials, p. 563, "That it being conſidered, that if the "Speaker go up with the charge, ſome "diſpute might ariſe about carrying the "Mace, it was reſolved, That Mr. Seymour "carry it."

§ This meſſage was drawn up upon paper for Mr. Seymour to read and deliver at the Lords Bar; but it is ſaid in a note to Grey's Debates,

" That the Earl of Clarendon might be ſequeſtered from Parlia-
" ment, and forthwith committed to ſafe cuſtody—and, that the
" Commons will, within a convenient time, exhibit the articles of
" the charge againſt him."

17. The impeachment againſt Sir William Penn, for embezzlement of prize goods, is delivered at a Conference, on the 24th of April, 1668.—The articles are reported to the Lords, and read; and Sir William Penn is ordered to appear at their Lordſhips Bar, on the 27th, to be heard, what he ſhall have to ſay thereupon.

18. On the 5th of December, 1678, the impeachment againſt the Lords, for being concerned in the Popiſh Plot, was delivered at the Bar of the Houſe of Lords, by meſſage; and that the Commons will in convenient time exhibit articles of charge *.

19. On the 23d of December, 1678, the impeachment againſt Lord Danby is delivered by meſſage at the Lords Bar by Sir Henry Capell; and the articles are brought up at the ſame time and preſented to the Lords.—They alſo pray, " That his Lordſhip may be

Debates, Vol. I. p. 38, " That by a miſtake,
" inſtead of the Earl of Clarendon's impeach-
" ment, the Earl of Strafford's, which lay on
" the table, was put into Mr. Seymour's
" hands; and he was obliged to truſt to his
" memory, when he came to the Lords Bar;
" but that he afterwards delivered a paper of
" the impeachment to the Clerk."

* The Commons, in delivering this charge, do not pray, that the impeached Lords may be committed; as, ſome days before, viz. on the 24th of October, after taking ſeveral examinations touching this buſineſs of the Popiſh Plot, and receiving informations againſt the Lords Arundel, Powys, Bellaſyſe, Stafford, and Petre, they had ordered Chief Juſtice Scroggs immediately to come to the Houſe; where, having examined Titus Oates upon oath, he iſſued twenty-ſix warrants for apprehending theſe Lords, together with ſeveral other perſons; by virtue of which, and by the ſubſequent orders of the Houſe of Lords, they were on the 5th of December in actual cuſtody; ſome in the Gatehouſe, others in the King's Bench, and others in the Tower.—See the Lords Journal of the 25th and 26th of October, 1678; and Grey's Debates, Vol. VI. p. 117.

" ſequeſtered from Parliament, and forthwith committed to ſafe " cuſtody."

20. On the 21ſt of December, 1680, Sir Gilbert Gerrard carries up to the Lords Bar the articles of impeachment againſt Mr. Seymour.—They are read;—Mr. Seymour is then called in *; and, having heard the articles, deſires a copy of them, which is granted to him; and a day is fixed by the Lords for delivering in his anſwer.

21. On the 7th of January, 1680, the Lord Cavendiſh, at the Bar of the Lords, delivers articles of impeachment againſt Sir William Scroggs, Chief Juſtice of the Court of King's Bench, for " High Treaſon †," and other high crimes and miſdemeanors ‡.

22. On

* The entry in the Lords Journal is, " The Houſe being acquainted, That Edward Seymour, Eſquire, was attending at " the door, to receive their Lordſhips pleaſure; he was called in; and, being brought " to the Bar, and kneeling, the Lord Chancellor told him, that there are articles of " impeachment brought from the Houſe of " Commons againſt him."

† There was much debate in the Houſe of Commons, Whether the crimes, as charged in the articles, amounted to high treaſon—and, though the Commons ſhould denominate them " treaſon," whether the Lords would ſo receive them, and upon that commit him?—But there is not a ſyllable of doubt, Whether, if they did amount to treaſon, this proceeding by impeachment againſt a Commoner for high treaſon was irregular?—Sir William Jones—Sir Francis Winnington—Serjeant Maynard—Mr. Finch—and Mr. Powle, took great part in theſe debates.—Grey's Debates, Vol. VIII. p. 237. After the examination of the witneſſes, on the 11th of November, 1680, on whoſe evidence theſe charges againſt Sir W. Scroggs were founded, Sir Francis Winnington ſays, " Mr. Speaker, the two great pillars " of the Engliſh Government are Parliaments " and Juries—it is this gives us the title of " free-born Engliſhmen. For my notion of " free Engliſhmen is this, That they are ruled " by laws of their own making, and tried by " men of the ſame condition with themſelves. " Theſe two great and undoubted privileges " of the people have been lately invaded by " the Judges, that now ſit in Weſtminſter " Hall." *State Trials, Vol.* VII. *p.* 481.

‡ Whilſt theſe articles were reading, " The " Lord Chief Juſtice, being preſent, *ſtood up* " in his place:"—but after they are read, and an order is made for his giving ſecurity for his appearance, he is brought to the Bar, and *kneels*—and then the Lord Chancellor acquaints him with this order.—The Lords refuſe to put the queſtion for committing

22. On the 26th of March, 1681, Sir Leoline Jenkins, at the Bar of the Houſe of Lords, impeached Edward Fitz Harris of High Treaſon, in the name of all the Commons of England *.

ting Sir William Scroggs, or for addreſſing the King to remove him from the execution of his office, till his trial be over.—Lords Journal, 7th of January.—See the proteſt upon this occaſion.

* See before, note ‡, p. 119.

## IV. *Proceedings in either Houſe between the Delivery of the Charge and the Trial.*

1. ON the 28th of May, 1624, the Lords Committees report an order concerning judicature, which the Houſe approve of, and order to be entered in the Journal—It is as follows: " * The Lords of the High Court of Parliament do hold it fit to conſider of ſome orders for the trials of ſuch perſons as ſhall hereafter be brought before them, and come to judicature: But, the ſeſſion being ſoon to end for this time, their Lordſhips hold it fit to declare now in the general, " That, as this Court is the higheſt, from whence others ought to draw their light, ſo they do intend the proceedings thereof ſhall be moſt clear and equal; as well, on the one ſide, in finding out offences, where there is juſt ground, as, on the other ſide, in affording all juſt means of defence to ſuch as ſhall be queſtioned: For the particulars, they do at this time order, " That in all caſes of moment, the defendants ſhall have copies of all depoſitions, both *pro* and *contra*, after publication, a convenient time before the hearing, to prepare themſelves; and alſo, that the defendants, if they ſhall demand it of the Houſe in due time, ſhall have their learned Counſel to aſſiſt them in their defence, whether they be able by reaſon of health to anſwer in perſon or not, ſo as they chuſe Counſel void of juſt exception; and if ſuch Counſel

* This is the general order referred to by the Lords, on the 15th of May, 1626, in their anſwer to the King's meſſage for diſallowing Counſel to the Earl of Briſtol; and it appears from the Lords Journal, that Charles the Iſt, then Prince of Wales, was preſent in the Houſe of Lords, (as the Lords ſtate) on the 28th of May, 1624, upon the day the order was made.—The conſideration of the ſeveral points, here mentioned, ſeems to have ariſen from the caſe of the Lord Treaſurer Middleſex, which had juſt before come before the Lords; and more particularly from his petition preſented on the 27th of April, 1624.

ſhall

ſhall refuſe them, they are to be aſſigned as the Court ſhall think fit."—This their Lordſhips do, becauſe in all caſes, as well civil, as criminal and capital, they hold that all lawful helps cannot, before juſt judges, make one that is guilty avoid juſtice; and on the other ſide, (according to his Majeſty's moſt gracious ſpeech) God defend, that an Innocent ſhould be condemned.—And for the calling a Member of this Court to the Bar, their Lordſhips hold it fit to be very well weighed, at what time, and for what cauſes, it ſhall be; and therefore the time being now ſhort, precedents are to be looked out, and this is to be conſidered of at the next meeting."

2. On the 18th of November, 1640, the Commons ſend a meſſage to the Lords, to deſire that they would appoint a Committee of a very few, who, "in the preſence of ſome of this "Houſe," might take depoſitions, and examine witneſſes, againſt Lord Strafford; and that the interrogatories, teſtimonies, and witneſſes might be kept private, until the charge be made full and perfect *.

3. Upon the meſſage from the Commons to the Lords, on the 11th of November, 1640, for impeaching Lord Strafford, he is immediately ſequeſtered from ſitting in Parliament, and committed to the cuſtody of the Gentleman Uſher.—But when the ingroſſed articles are brought up, on the 25th of November, he is forthwith committed to the Tower.—He is allowed a copy of the articles, to

* See, in the Lords Journal of the 20th of November, Mr. Pym's ſpeech on delivering this meſſage; and alſo the proceedings of the Lords on the 20th, 21ſt, and 23d of November, in conſidering and agreeing to what was deſired by the Commons.—On the 1ſt of December, the Lords order, "That ſuch of the "Houſe of Commons, as they ſhall make "choice of, may be preſent from time to time "at the taking of ſuch preparatory examina-"tions, as ſhall be deſired by them to be "taken, for perfecting the charge againſt the "Earl of Strafford."—On the 4th of December eight Members are appointed for this purpoſe.—See alſo what is deſired by the Commons in the caſe of Sir George Ratcliffe, and agreed to by the Lords on the 29th and 31ſt of December, 1640.

prepare a ſpeedy anſwer; and likewiſe, that he have free acceſs of ſuch Counſel * as the Houſe ſhall approve of, to adviſe about his anſwer; and that the acceſs of friends and ſervants ſhall not be debarred him; and ſuch phyſicians, as he ſhall think fit for his health, ſhall have acceſs to him.

4. On the 19th of November, 1640, the Commons had deſired that the Lords would make an order, that ſuch of their Lordſhips as it ſhould be neceſſary to examine in the buſineſs concerning Lord Strafford, might be examined upon oath.—The Lords taking this meſſage into conſideration on the 21ſt, ordered, "That, upon "the deſire of the Houſe of Commons, and by the conſent of the "Peers of this High Court of Parliament aſſembled, for this time, "and in this caſe †, the Peers and Aſſiſtants ſhall be examined "upon oath, as witneſſes."

5. On

* Lord Strafford had, on the 19th of November, preſented a petition to the Lords, deſiring, That he might be bailed, have Counſel aſſigned him, and a Solicitor, in the modeſt and juſt courſe of his own defence.

† This muſt relate only to the examinations and depoſitions, which were taking at this time, in the caſe of Lord Strafford, before a Committee of Lords, at which a Committee of the Houſe of Commons was alſo preſent; and can have no reference to any evidence that was to be given by the Lords upon the trial; which, in this inſtance, as well as in every other for treaſon or felony, muſt have been delivered upon oath.—This application of the Commons, and conceſſion of the Lords, "That "for this time, and in this caſe, the Lords "might be examined upon oath," brought on a re-conſideration of the queſtion, In what caſes Peers might anſwer upon honour only? —and produced the following report from the Committee of Privileges, on the 31ſt of December, 1640: "Our opinions are clear, and "that, upon hearing divers learned men of "both laws ſpeak, that our anſwers upon "honour only can be no impediment to the "common juſtice of the kingdom, but a due "and juſt preſervation of our ancient liberties; "and therefore we offer it as our unanimous "opinions to the Houſe, That our former order "may ſtand in full force, which is entered upon "our roll *in hæc verba*:—"Ordered, upon "the queſtion, *nemine contradicente*, That the "Nobility of this kingdom, and Lords of the "Upper Houſe of Parliament, are, of ancient "right, to anſwer, in all courts, as defendants, "upon proteſtation of honour only, and not "upon the common oath.—And that the ſaid "order, and this explanation, doth extend to "all anſwers and examinations upon *interrogatories*, in all cauſes as well criminal as civil, "and in all courts and commiſſions whatſoever; and alſo to the perſons of the Widows "and Dowagers of the temporal Peers of this "Land: And that the Lord Keeper of the "Great Seal of England for the time being, or "the Speaker of the Lords Houſe for the "time being, do forthwith give notice of it, "together

5. On the 29th of December, 1640, the Lords reſolve, That if any Lord ſhall be examined as a witneſs in the caſe of Lord Strafford, and if it appear, at the time of the judgment, that he is a material witneſs, and thereupon ſhall have any ſcruple or doubt ariſe in his conſcience, that therefore he ought not to ſit as a Judge in the ſame cauſe, that then, upon his humble motion to the Houſe, he be excuſed therein *.

6. On the 3d of February, 1640, a day is fixed by the Lords, for the Lord Strafford to put in his anſwer in writing to the further charge of the Houſe of Commons †.—On the 17th of February he is called upon, at the Bar, to produce his anſwer, and is permitted by his Counſel to ſhew why it is not yet ready;—after much debate, another week is allowed him, when he is peremptorily to anſwer, and is then to attend in perſon; and this is communicated to the Commons at a Free Conference on the 18th.—Upon the report of this Conference in the Houſe of Commons on the 18th,

" together with this explanation, to all the " Courts of Juſtice, and the Judges, Clerks, " and Regiſters of them, by cauſing our former order, with this explanation, to be recorded in all courts; and that all orders, " conſtitutions, or cuſtoms, entered or practiſed to the contrary, whatſoever, may be " aboliſhed and declared void; and the Lord " Keeper of the Great Seal for the time being, " or Commiſſioners of the Great Seal, out of " Parliament time, ſhall ſee all practice to the " contrary, hereafter, to be puniſhed with " exemplary ſeverity, to deter others from the " like attempts."—And being put to the queſtion, Whether this ſhall be entered as an order of the Houſe? it was conſented to, *nemine contradicente*.—See the Lords Journal, 31ſt of December, 1640.—Blackſtone ſays, Vol. I. page 402, " A Peer ſitting in judgment gives " not his verdict upon oath, but upon his " honour; he anſwers alſo to bills in chancery " upon his honour, and not upon his oath; " but, when he is examined, as a witneſs, " either in civil or criminal caſes, he muſt be " ſworn: for the reſpect, which the law ſhews " to the honour of a Peer, does not extend ſo " far as to overturn a ſettled maxim, that *in* " *judicio non creditur niſi juratis*."

* This was at the ſuggeſtion of the Earl of Briſtol, who, having been ſworn as a witneſs, to be examined in the cauſe of Lord Strafford, deſired their Lordſhips to take it into conſideration, whether any Lord, that hath been examined as a witneſs, ought to be a Judge in the ſame cauſe.

† This order was made after a debate, Whether he ſhould anſwer in writing, or verbally, guilty or not guilty—and after this matter had been re-conſidered in a Committee of the whole Houſe.

they immediately appoint a Committee to take it into conſideration, and alſo what concerns the rights of the Commons, in the proceedings in the Lords Houſe againſt Lord Strafford; and what concerns the kingdom in general in the legality of thoſe proceedings; and they are likewiſe to conſider, what is fit for the Commons to claim in caſes of impeachment.—On the 22d of February, Mr. Glynn makes the report from this Committee *.—Another Conference is held on the 23d, when the Lords acquaint the Commons, in reply to what they had deſired of the Lords on the preceding day, "That they "ſhall admit Lord Strafford no further uſe of Counſel than the "neceſſity of the cauſe for his juſt defence requireth, and wherein "Counſel may, with the juſtice and honour of this Houſe, be "afforded him; and there ſhall be no delay in the proceeding, but "all convenient expedition uſed, according to the deſire of the "Commons."

7. When the Earl of Strafford delivers in his anſwer, at the Bar of the Houſe of Lords, to the articles of impeachment, on the 24th of February, 1640 †; a queſtion aroſe, Whether the Biſhops ſhould be preſent at the reading of it, it being *in agitatione cauſæ Sanguinis* —and the Lords the Biſhops ſaid they would withdraw; accord-

* This report is not entered in the Journal, nor in Ruſhworth, or the Parliamentary Hiſtory; but it appears, from the Lords Journal of the 22d of February, to have related to the indulgence ſhewn by the Lords to Lord Strafford, in allowing him further time, and to the permitting him to be heard by his Counſel to this point.

† At the ſitting of the Houſe of Lords, upon this day, the 24th of February, Charles the Iſt came unexpectedly to the Houſe, being without his robes; and declared unto the Houſe, that the cauſe of his coming now, was to hear the charges againſt the Earl of Strafford, and his anſwers, for his own particular information.—The Lords ſitting ſilent; the Lord Keeper ſtanding behind, on his Majeſty's right-hand, by command from the King, called for the Earl of Strafford to be brought to the Bar; and commanded the charge to be read againſt him, one article after another, by the Clerk of the Parliament; and the Earl of Strafford's anſwer to every article, by his Counſel.—After the King was gone, the Lords commanded the Lord Keeper to reſume the Houſe—And then the Lords, "taking all "that was done in the King's preſence to be "no act of the Houſe," ordered the Earl of Strafford to be brought to the Bar; and demanded of him his anſwer in writing, according as he was enjoined by order of the Houſe. —Lords Journal.

ingly, as ſoon as Lord Strafford came in, the Lords the Biſhops went out.—Lord Strafford's anſwer is communicated to the Commons at a Conference on the 25th of February.—On the 26th, it is referred by the Commons to the Committee who had been appointed to draw up the charge; and they are directed to proceed in the ſecreteſt and ſpeedieſt way they can, for the advantage of the buſineſs.—On the 6th of March, Mr. Whitelocke reports from that Committee, "That there ſhall be no replication put in to this anſwer in "writing; but that a meſſage be ſent to the Lords to acquaint "them, That the Commons have conſidered of the Earl of Straf-"ford's anſwer, and do aver their charge of High Treaſon againſt "him—And that he is guilty in ſuch manner and form as he ſtands "accuſed and impeached—And that the Houſe will be ready to "prove their charge againſt him, at ſuch convenient time as their "Lordſhips ſhall prefix—And intend to manage the evidence by "Members of their own *."

8. On the 22d of February, 1640, it was moved in the Houſe of Lords, That the Houſe would conſider, whether it be fit that thoſe Members of this Houſe, that voted in the Houſe of Commons in the accuſation of High Treaſon againſt the Earl of Strafford, ſhould be Judges in this Houſe againſt him for the ſame cauſe—This is to be debated the next day.—But the Lord Rich, Lord Howard, and the Lord Keeper, immediately deſired the Houſe, that they, having voted in the Houſe of Commons againſt him, might be excuſed from being Judges †.

9. On

* This appears to have been at one time matter of doubt; whether the impeachment on the part of the Commons ſhould be managed by their own Members, or by Counſel—as, upon the 27th of February, there is the following entry in the Journal:—"Upon Mr. "Whitelocke's report from the Committee "for the Earl of Strafford, the Houſe does "declare, that they are very well ſatisfied, "that the evidence to be produced againſt the "Earl of Strafford, at his trial, be managed "by Members."

† On the 20th of March, the Lords report from a Committee (appointed on the 19th to conſider of this point) that they were of opinion, "That thoſe that voted in the Houſe of "Commons

9. On the 26th of February, 1640, the Committee who were appointed to draw up the charge againſt the Earl of Strafford, are to conſider of the articles, and his anſwers; and they are likewiſe to conſider of the proofs; and how the witneſſes may be conveniently brought together, to give their teſtimony *vivâ voce*; and they are to proceed in the ſecreteſt and ſpeedieſt way they can, for the advantage of the buſineſs, in preparing it for a trial;—and they have power to ſend for perſons, papers, and records, or any thing elſe that they ſhall, in their judgment, conceive fit, or that may conduce to the ſervice.

10. When the articles of impeachment for miſdemeanors againſt Dr, Coſins, and ſeveral others, are delivered to the Lords, on the 16th of March, 1640, and read—all the parties are immediately ordered to be brought up by the Gentleman Uſher; and to appear on the 18th.—On the 18th, being in cuſtody, they are ordered to give bail * for their abiding the judgment of Parliament.—On the 14th of May, 1641, Dr. Coſins, and the reſt, are called in, and hear the impeachment read.—On the 4th of June, a meſſage is ſent to the Commons to acquaint them, That the anſwers from moſt of the perſons impeached are brought in.—On the 5th, the

" Commons in the Earl of Strafford's caſe, " and ſince are Peers, may vote as Judges " here, in this Houſe, in the ſame cauſe."—I do not find, that the Lords confirmed this report from the Committee.—Lord Clarendon ſays, " The example of the Biſhops, excuſing " themſelves from attending, prevailed with " ſome Lords, who had been created ſince " the accuſation, to quit their right of judg- " ing; and, amongſt them, the Lord Littleton (who had been made a Baron upon the " deſire of the Earl of Strafford, for that only " reaſon, that he profeſſed, 'If he were a " Peer he would, and indeed he could, do him " notable ſervice') was the firſt who quitted " his right to judge, becauſe he had been a " Commoner when the accuſation was brought " up: but they who inſiſted upon their right, " (as the Lord Seymour and others) and demanded the judgment of the Houſe, were " no more diſturbed, but exerciſed the ſame " power to the end, as any of the other " Lords did." Hiſtory of the Rebellion, Vol. I. p. 171. Book the 3d.

* See, on the 20th and 30th of March, and 6th of April, 1641, the nature of the ſecurity they gave.

Lords

Lords order, That Dr. Coſins ſhall bring in the pardon, which he mentions in his anſwer.

11. On the 6th of March, 1640, the Commons deſire a Conference with the Lords, to conſider of ſome propoſitions and circumſtances concerning Lord Strafford's trial.—This Conference was held on the 8th; and the ſubject of it was, to deſire the Lords to appoint a convenient place for the Commons and the Managers; and that there may be room for both Houſes, that thereby the Members of the Houſe of Commons may inform their conſciences, for giving their votes, when they demand judgment * ;—and alſo, to ſignify, that the Houſe of Commons, having intimated that they ſhould manage the evidence by Members of their own, do not expect that any counſel be allowed to the Earl of Strafford, at the giving of evidence upon the trial.—The Lords, in anſwer to this, upon the 9th and 11th of March, deſire the Commons to ſhew precedents,

* Though this is the only reaſon alleged by the Houſe of Commons, for deſiring to be preſent in a body, Lord Clarendon ſuggeſts, that there was another, much more important; "That the Commons then foreſaw, that "they might be put to 'another kind of pro-"ceeding' than that they pretended; and they "therefore (though with much ado) conſent-"ed to ſit uncovered, leſt ſuch a little circum-"ſtance might diſturb the whole deſign."—Hiſtory of the Rebellion, Vol. I. p. 170.—The 'other kind of proceeding,' alluded to by Lord Clarendon, was a Bill of Attainder; and the truth of his ſuſpicions is very much confirmed by what the Commons ſay, in a Conference that was held upon the 15th of April, 1641: "Another thing that came into "our conſideration is, the way of proceeding "hitherto had; and whether the proceeding "in a Judgment, or upon a Bill, might moſt "conveniently and properly be taken; for if "it be to demand Judgment of your Lord-"ſhips, no man can ſay againſt what hath "been done—but, if it be by way of Bill, "there muſt be a guilt, a fact, before there "can be a juſt attainder; a fact muſt appear "before there can be a juſt judgment;—it "muſt appear to them that concur in the "Bill; that is, to both Houſes, your Lord-"ſhips and the Houſe of Commons—*And "that courſe hath been taken, that the evidence "hath been given in effect in preſence of both "Houſes*; ſo that the proceedings by way of "Bill, or by way of Judgment, do not op-"poſe that which your Lordſhips, and the "Houſe of Commons have done."—See the Lords Journal, the 15th of April, 1641.—Mr. Maynard, in a report of what was intended to be offered to the Lords at this Conference, ſays, "The evidence of fact being given, it "was in propoſition *from the beginning* to go "by way of Bill."—Commons Journal, 15th of April.

"where

" where the place hath been changed; for that locally the judica-
" cature hath been in the Houſe of Lords."—And with reſpect to
counſel, the Lords order, " That in matters of mere fact, Lord
" Strafford ſhall not make uſe of his counſel; but in matters of
" law, he ſhall be allowed counſel—And if any doubt ariſe, What
" is, or is not matter of fact, the Lords will reſerve the judgment
" of this to themſelves *."—In anſwer to this, the Commons, at
the next Free Conference, which is held on the 13th of March,
inſiſt, (1.) " That, the Parliament being ſummoned to appear at the
" King's Palace at Weſtminſter, if one room be not convenient,
" another may be deſired that ſhall be more convenient." (2.)
" That Lord Strafford being impeached by them, the Commons
" may of right come as a Houſe, if they pleaſe; but, for ſome
" ſpecial reaſons, they are reſolved to ſend their own Members,
" as a Committee of the whole Houſe, authorized by the Houſe to
" be preſent at the trial, to hear, and ſome particular perſons of
" themſelves to manage, the evidence." (3). By the word " ma-
" naging the evidence, they mean, the ordering, applying, and
" enforcing the evidence, according to the truth of the fact."
(4.) " With reſpect to counſel, they ſay, That, by the law and
" courſe of Parliaments, no counſel is to be allowed Lord Strafford
" until the evidence be fully concluded upon both parts, upon
" all the ſeveral articles; and if at any time, during the evidence,
" the counſel ſhall interpoſe, the Members of the Houſe of Commons
" muſt of neceſſity deſiſt, becauſe it will not become them to plead
" againſt counſel †."

12. On

* See in the Lords Journal of the 9th of March, and in the Commons Journal of the 11th, a more particular account of what the Lords anſwered to theſe requeſts of the Commons, touching, (1.) The Place—(2.) The Perſons—(3.) Managing of the Evidence—(4.) Uſe of Counſel.

† In conſequence of this laſt Conference, the Lords, upon the 13th of March, appoint the trial to be in Weſtminſter Hall; and agree that the Commons may be preſent as a Committee, for this time; but that this ſhall not be drawn into a precedent.—See the Commons Journal of the 15th and 16th of March;—on the

12. On the 15th of March, 1640, the Lords appoint a Committee to conſider of a Lord Steward; and to prepare all things requiſite againſt the day of trial of Lord Strafford *.—And, on the 19th, another Committee is appointed, to conſider whether the Biſhops, and Lords Temporal, may give their proxies in caſes of blood—And alſo, whether thoſe who voted in the accuſation againſt Lord Strafford, and are ſince Members of the Lords, may ſit as Judges †.

13. On the 18th of March, 1640, it is ordered by the Commons, That if any of the witneſſes in the Lord Strafford's cauſe have, or ſhall depart the town, having been required to ſtay, before ſuch time as the Committee appointed to conduct the buſineſs be acquainted therewith, ſuch perſon ſhall be adjudged to offer a great contempt to this Houſe, and ſhall be forthwith ſent for as a delinquent.

the laſt of which days they reſolve, "That of "right they may come as a Houſe, if they "pleaſe, the Earl of Strafford having been "impeached by them; but for ſome ſpecial "reaſons upon this occaſion, they are reſolved "to ſend their own Members, as a Committee "of the whole Houſe authorized by the "Houſe, to be preſent at the trial, to hear, "and ſome particular perſons of themſelves to "manage the evidence.—And that, with "reſpect to the matter of allowing Counſel, "and their Lordſhips reſervation to their "judgment, what is matter of fact and what "not; the Houſe of Commons do ſave to "themſelves, as they have formerly done, all "rights that do pertain to them, according to "law, and 'the courſe of Parliaments.'"—This proteſtation and ſaving is carried up by Mr. Whitelocke on the 20th of March.

* See, in the Lords Journal of the 19th of March, and the Commons Journal of the 20th, the rules and orders preſcribed by each Houſe, to be obſerved at the trial.

† See before, N° 8, the proceedings on the 22d of February, 1640; and ſee the Lords Journal of the 20th of March, where a Committee, appointed the preceding day, report their opinion, (1.) That the Lords ſhall not make uſe of proxies; (2.) That the Lords who voted in the Houſe of Commons, and ſince are Peers, may vote as Judges; (3.) And, that the Biſhops ſhould ſhew reaſons why they ſhould not likewiſe forbear giving their proxies in this caſe.—To the firſt and third of theſe reſolutions the Houſe agree; but do not appear to have given any opinion upon the ſecond point reported from their Committee. And the Lords, the Biſhops, did declare, That in this caſe, ſaving their rights, they will not make any procurator for themſelves.—Lord Clarendon, in Vol. I. of the Hiſtory of the Rebellion, p. 170, and 171, relates ſeveral anecdotes reſpecting theſe two points, of the Biſhops and Peers lately made, voting in this queſtion.

14. On

14. On the 19th of March, 1640, the Lords reſolve, *nemine contradicente*, "That the Lord Steward of his Majeſty's houſehold, "(appointed during this Parliament) ſhall be Steward for the trial "of the Earl of Strafford only *."

15. On the 20th of March, 1640, Lord Strafford having, by petition, deſired to examine ſome Members of the Houſe of Commons as witneſſes upon his trial; the Houſe of Commons leave thoſe Members named in the petition to do therein as they ſhall pleaſe, without thereby giving any offence to the Houſe.

16. On the 20th of March, 1640, the Commons arrange the manner in which the Committee of the Houſe ſhall ſit in Weſtminſter Hall, without intermixture of any others, in the place prepared for them; and that, in reſpect of the inconveniency of it, the Members ſhall not come to meet at the Houſe, but come directly to the place of trial †—Mr. Speaker is to be preſent in ſome private place, and as a particular Member of the Houſe; but no order is to be made upon this.

17. On the 22d of March, 1640, the Commons reſolve, That in caſe the Earl of Strafford ſhall aſk leave, or ſhall have liberty given him to ſpeak any thing by way of defence, before ſuch time as the Members, that are appointed to manage the evidence, ſhall enter into the managing of their evidence, that then they

* This Lord High Steward was the Earl of Arundel.—See his character very well drawn by Lord Clarendon, in Hiſtory of the Rebellion, Vol. I. p. 44. He adds, p. 171, "That he was made choice of by the Lords "for this office (in the abſence of the Lord "Keeper, who was very ſick) being a perſon "notoriouſly diſaffected to the Earl of Straf-"ford."—Ruſhworth has given a particular account of the ceremonies at the trial; and of the places where the King, Queen, and Prince of Wales ſat. Vol. VIII. p. 41; and in the preface to that volume.

† On the 30th of March, 1641, and 31ſt, and on the 2d of April, there is an order for the Houſe to meet the next day, at Weſtminſter Hall, as a Committee, and ſo during the trial; and, on the 8th of April, the Houſe are to meet the next morning, at eight o'clock, as a Committee, in Weſtminſter Hall; and in the Houſe at two o'clock.

ſhall

ſhall interpoſe; and if ſo be, that notwithſtanding ſuch interpoſition the Lords ſhall give him leave to ſpeak, that then they ſhall forbear to proceed further in the managing of their evidence, until they have repaired unto the Houſe, and received further order from them.

18. On the 23d of March, 1640, the Lords reſolve, (1.) That Lord Strafford be not admitted to ſpeak at his trial, before the Houſe of Commons have fully managed their evidence againſt him: (2.) If a witneſs gives evidence for the Commons; after the evidence, Lord Strafford may aſk him queſtions: (3.) If Lord Strafford except againſt a witneſs, he is to be heard, before the witneſs gives in his evidence.

19. On the 25th of March, 1641, the Committee appointed to manage the evidence at Lord Strafford's trial, have liberty to proceed upon ſuch articles, as they ſhall think moſt important for the ſpeedieſt expediting of the trial; and to contract, and to proceed, in ſuch manner as they ſhall think moſt expedient.

20. On the 2d of April, 1641, Mr. Pym went to the Lords, to deſire that ſuch of their Lordſhips, as this Houſe ſhall have occaſion to make uſe of at the trial of Lord Strafford, would be pleaſed to be preſent at the ſaid trial—and by name, the Lord Treaſurer, &c *.—Mr. Pym likewiſe nominated ſome Members of

* The Lords, anſwer "That the other "Lords named ſhould be preſent conſtantly; "but they deſired that the Lord Treaſurer "might have notice upon what day he is to "be preſent; in regard he ſits not upon the "trial, being a Biſhop." This Lord Treaſurer was Juxon, Biſhop of London; "a man "ſo unknown," ſays Lord Clarendon, "that "his name was ſcarce heard of in the kingdom; he had been, within two years before, "but a private chaplain to the King, and the "preſident of a poor college in Oxford.—But "Archbiſhop Laud was infinitely pleaſed with "what he had done; and unhappily believed, "he had provided a ſtronger ſupport for the "church." Hiſtory of the Rebellion, Vol. I. p. 76.—See in his life in the Biographia Britannica, an account of his conduct from this time

of the Houſe of Commons; viz. Mr. Treaſurer, Sir W. Pennyman, &c.—A note of theſe names was given to the Serjeant; and he was ordered to give notice to the Members, to be there preſent, upon all occaſions.

21. On the 28th of June, 1641, a meſſage is brought from the Commons to the Lords, to acquaint them, that they formerly * brought up an impeachment of High Treaſon againſt the Archbiſhop of Canterbury, which hath lain aſleep ever ſince; but that now, intending to proceed, and examine witneſſes, the Commons deſire their Lordſhips, that a Select Committee may be appointed, to examine ſuch witneſſes as the Houſe of Commons ſhall deſire, and that to be in the preſence of ſome Members of the Houſe of Commons.—The Lords appoint the ſame Committee of Lords to take the examination of witneſſes upon oath in this cauſe, as were appointed in the cauſe of Lord Strafford.—Mr. Attorney General, and Mr. Serjeant Glanvylle, to write down the examinations †.

time to the King's death, when he attended his Majeſty on the ſcaffold, with the converſation that paſſed between them there.—After the Reſtoration, he was tranſlated, to be Archbiſhop of Canterbury. Whitelocke gives the following character of him,—"Whilſt he reſided on his living at Somerton in Oxfordſhire, he was much delighted with hunting, and kept a pack of good hounds; and had them ſo well ordered and hunted, chiefly by his own ſkill and direction, that they exceeded all other hounds in England, for the pleaſure and orderly hunting of them. He was a perſon of great parts and temper, and had as much command of himſelf, as of his hounds; he was full of ingenuity and meekneſs, not apt to give offence to any, and willing to do good to all."

*Whitlocke's Memoirs, p.* 23.

* See before, p. 128.

† Neither of theſe were at this time Members of the Houſe of Commons, but aſſiſtants to the Houſe of Lords.—The further proceedings againſt Archbiſhop Laud, being all ſubſequent to the 4th of January, 1641, and ſome of them deferred ſo late as into the year 1644, do not fall within the compaſs of this work—being in times, from whence no precedents ought to be drawn, to juſtify the proceedings of either Houſe of Parliament.—The curious reader will find them in the Journals of that period; and in the State Trials, Vol. I. p. 803, ſaid there, to be written by the Archbiſhop during his impriſonment in the Tower. —See particularly in page 817, the Archbiſhop's account of the mode in which his trial was conducted. He was afterwards condemned by an ordinance, and executed on the 10th of January 1644–5. See before Note † page 149.

22. On

22. On the 11th of Auguſt, 1641, the Lords, at a Conference, offer to the conſideration of the Commons, Whether the charge brought up by them againſt the thirteen Biſhops (which is inſerted in the Commons Journal of the 4th of Auguſt) is not too general for the Biſhops to make anſwer to, or for the Lords to ground a judgment upon?—and if it be ſo, then, whether the Commons would not form a particular charge in writing againſt the ſaid Biſhops, upon the verbal charge which they have brought? or, that the King's Attorney ſhould draw up a particular charge, to which the Biſhops might make a particular anſwer, and the Lords proceed to judgment thereupon?—On the 13th of Auguſt, the Commons deliver a more ſpecific charge.

23. The Lords reſolve, upon the 17th of Auguſt, 1641, That ſuch of the Biſhops that are impeached may ſit in the Houſe, without voting, when it is in debate, Whether they ſhall have further time to anſwer or not? but that they ſhall not ſit in the Houſe whilſt the merits of the cauſe are in debate; and that, whilſt the manner of proceeding in the cauſe is in debate, the Biſhops may ſit, but not vote *.

24. On the 23d of October, 1641, the Lords aſſign counſel to the impeached Biſhops—and on the 26th of October, the Commons demand a Conference with the Lords, concerning the ſequeſtering the thirteen Biſhops, accuſed by the Commons, from their votes in Parliament †.—On the 12th of November, twelve

* The Lords, upon the 17th of Auguſt, give leave to three of the impeached Biſhops to go into their dioceſes.

† This Conference is reported in the Lords Journal of the 28th of October, with the reaſons of the Commons, as ſtated by Mr. Pym, why theſe thirteen Biſhops ſhould be excluded from their votes in Parliament;—See alſo what reaſons were urged, at the ſame Conference, by Mr. Solicitor General St. John, for ſuſpending *all* the Biſhops from voting on a Bill that was depending "for diſabling all "perſons in holy orders to exerciſe any juriſ-"diction or authority temporal."

of the Biſhops deliver in their anſwer, conſiſting of a plea and demurrer.—The Biſhop of Glouceſter pleads, Not guilty.—This is ſent to the Commons; who reſolve, "That this plea and demurrer of the Biſhops is dilatory and inſufficient;" and that they have made no anſwer; and that they may be required to put in a peremptory anſwer, ſuch as they will ſtand to.—On the 6th of December, the Commons deſire, notwithſtanding this plea and demurrer, to be admitted to their proofs, and that the Biſhops may be brought to judgment.—The report of what had paſſed at this Conference is made to the Lords by the Archbiſhop of York, on the 7th of December.—On the 11th of December, the Biſhops adhere to this mode of proceeding; which is communicated to the Commons on the 13th *.

25. On the 23d of October, 1641, the Lords ſend word, That they intend to proceed againſt Judge Berkley on a particular day, that the Houſe might be ready.—On the 26th of October, he is brought to the Bar of the Houſe of Lords, as a delinquent, where the impeachment againſt him for "High Treaſon" is read.—He pleads, Not guilty †.—Counſel are aſſigned him in point of law, which may happen upon matter of treaſon, and in point of law and fact, which may happen in matter of miſdemeanor ‡.

26. On

* I find no further proceeding on this ſubject in the Journals of either Houſe.—The Biſhops were adviſed, within a few days after, to preſent a petition and proteſtation to the King, ſtating the menaces and affronts which they had received in their attendance on Parliament, ſo that they no longer dared to ſit and vote in the Houſe of Lords; and "there-"fore proteſting againſt all laws, votes, or-"ders, reſolutions, and determinations which "had been paſſed ſince the 27th of December, "1641, as null and void, and of no effect."—The King communicated this petition to the Houſe of Lords, on the 30th of December; and the proceedings upon it will appear in the further part of this title.—See alſo the anecdote related before, in the note, p. 134, from the Life of Archbiſhop Williams, who was the adviſer of this petition and proteſtation.

† See what is ſaid upon this impeachment, p. 149. of this volume, N°. 8. In Judge Berkley's petition, which is preſented to the Lords on the 26th of October, he deſires the Houſe will admit him to have Counſel, in point of law, upon the matter of High Treaſon, of which he is impeached.

‡ There were ſome further proceedings in this matter in the courſe of the following ſummer,

†

26. On the 4th of December, 1641, the Houſe come to ſeveral reſolutions againſt Daniel O'Neile.—On the 6th, they reſolve, He ſhall be accuſed of High Treaſon *; and on the 17th of December, the Houſe is of opinion to proceed by way of accuſation and impeachment.—On the 18th, the articles are read and voted, and ingroſſed.—He is impeached the ſame day at the Bar of the Houſe of Lords; and immediately committed, at the requeſt of the Commons.

27. On the 31ſt of December, 1641, a Committee is appointed to conſider of the impeachment of the Biſhops, who had ſigned the petition and proteſtation, and how the Houſe ſhall beſt proceed, to bring them to a ſpeedy trial †.—On the 3d of January, the Lords allow them Counſel, to adviſe them in their defence.—The proceedings went on into the next year.

28. On the 6th of December, 1660, when the articles of impeachment againſt W. Drake, for publiſhing a ſeditious pamphlet, intitled,

mer, but, being ſubſequent to the 4th of January, 1641, and containing nothing very ſpecial, they are not entered in this work. Lord Clarendon ſays, "The judicature of the Houſe of Peers (though their number was but ten, for there were no more at the ſentence of Judge Berkley) had helped them all they could. Judge Berkley, who had been committed to the Tower, ſhortly after the beginning of the Parliament on a charge of High Treaſon, and, ſince the beginning of the war, permitted to ſit as ſole Judge in the King's Bench one whole term, was now (the latter end of the year 1643) brought to judgment; and by their Lordſhips fined the ſum of 20,000*l.* and made incapable of any place of judicature." *Hiſt. of the Rebel. Vol.* II. *p.* 290.

* Here is another inſtance of a Commoner impeached at the Bar of the Houſe of Lords of High Treaſon.—The articles are not ordered to be carried up, till the 26th of March, 1642.

† See what is ſaid before, in the notes, p. 134 and 172.—This petition and proteſtation is entered in the Journals of both Houſes of the 30th of December.—Amongſt other things, they proteſt, "againſt all laws, orders, "votes, reſolutions, and determinations, as in "themſelves null and of none effect, which in "their abſence, ſince the 27th December, "1641, have already paſſed in the Houſe of "Lords, during the time of this their forced "and violent abſence from the ſaid Houſe."—They are impeached, "For endeavouring to "ſubvert the fundamental laws of this king-"dom, and the very being of Parliament, by "preferring this petition, and making the "proteſtation expreſſed in the petition."

intitled, "The Long Parliament revived," are read *, the Lords immediately order the ſaid W. Drake to be apprehended as a delinquent by the Serjeant at Arms; and to be brought before the Lords in Parliament to anſwer his charge.—On the 12th of December, Drake is accordingly brought as a delinquent to the Bar, when the articles are read; to which he anſwers, "That he "confeſſes he did write and publiſh the book; but had no intention "of ſedition—That he is ſorry, and ſubmits himſelf to their Lord-"ſhips mercy."—On the 19th of December, the Lords taking this again into conſideration, reſolve, "That, as they apprehend they "may not have time, before the diſſolution of the Parliament, to "proceed in judicature againſt him, the King's Attorney General "do, in his Majeſty's name, proceed againſt the ſaid W. Drake, in "the Court of King's Bench, upon the ſaid offence, according to "the ordinary courſe of law †."

29. On the 3d of January, 1666, when the articles of impeachment againſt the Lord Mordaunt, for illegally and arbitrarily impriſoning Mr. Tayleur, are read in the Houſe of Lords—the Lords appoint a Committee to ſearch for precedents, and what proceedings have been had in caſes of the like nature; and, at the Lord Mordaunt's requeſt, direct, that he ſhall have a copy of the articles; and appoint a day for him to offer to the Houſe what he ſhall have to ſay concerning the ſaid impeachment.—On the 10th of January, the Committee report ‡ four precedents of impeachments from the

* See theſe articles in the Lords Journal of the 6th of December.

† See before, note *, 135.—What further ſteps were taken in this matter does not appear; probably no proſecution whatever was had; becauſe, on the 31ſt of May, and 6th of June, 1661, the Lords themſelves ſo far countenanced the doctrine contained in Drake's book, as to put a queſtion to the Judges, "Whether the Parliament, begun on the 3d "of November, 1640, is now determined?" and, though the Judges give an unanimous opinion in the affirmative, the Lords ſtill think proper to order the Attorney General to prepare a declaratory Bill upon this ſubject. I do not find any progreſs made in this Bill (the third upon this ſubject) it certainly did not paſs.

‡ This report is as follows:

The 1ſt precedent, (1.) is the caſe of the Lord

the Houſe of Commons, of Peers, for miſdemeanors.—On the 17th of January, the Lord Mordaunt puts in his anſwer *, which is com-

Lord Latimer, in the Roll 50 Edward III. N° 21.—See this before, p. 51 in this volume.

(2.) "The ſecond is in the 25th of Henry "VIII. where the Biſhop of London was "impeached by the Houſe of Commons, for "impriſoning Thomas Phillips, for ſuſpicion "of hereſy."

The Journals of the Houſe of Commons of this period, the year 1533, are not exiſting; but the entries in the Journal of the Lords, in the 1ſt vol. p. 65, of the proceedings between the two Houſes on this ſubject, are curious, and worth tranſcribing:

"Septimo die Februarii, 1553.—Hodie, a Domo Communi allatæ ſunt quatuor Billæ—Quarum tertia in papyro ſcripta, concernit querimoniam Thomæ Phillips (qui diutino tempore in priſona concluſus eſt, ut de hereſi ſuſpectus) adverſus Johannem London. Epiſcopum—Et quarta, comprehendit articulos, tam objectionum prefato Thomæ Phillips impoſitarum, quam reſponſionum per ipſum Thomam facta.

"Nono die Februarii.—Hodie, billa in papyro ſcripta, a Domo Communi tranſmiſſa, concernens querimoniam Thomæ Pilllips, adverſus Johannem London. Epiſcopum, cum dicta billa articulorum, *ſemel* ſunt lectæ: quibus auditis, memorati Domini excogitabant, ut non ad hunc illuſtrem Senatum, ſive Conſilium, pertinet de talibus frivolis rebus conſultare; ideo decretum fuit ut redactæ fuerint ad Domum inferiorem.

"Secundo die Martii.—Hodie, Epiſcopus London. memoratis Dominis intimabat, die ſuperiore ſe (quibuſdam a Domo Communi deſtinatis illum requirentibus, ut ſtatim in ſcriptis talibus rebus reſponderit, quas quidam Thomas Phillips, in turre Londonienſi per ipſum Epiſcopum detentus, adverſus eum inculpabat) dixiſſe, ut querela prefati Thomæ Phillips, a Domo communi in ſcriptis ad ſuperiorem allata fuit; quæ excogitata fuit res frivolis in eo loco conſultanda, adeo remiſſa fuit ad Domum inferiorem; et in ea re nihil egerit, donec opinio prefatorum Dominorum cognoſceretur.—Quibus verbis auditis, omnes Proceres, tam Spirituales quam Temporales, una voce dicebant, quod non conſentaneum fuit aliquem Procerum predictorum alicui in eo loco reſponſurum."

(3.) "The third caſe, was the impeach-"ment of the Houſe of Commons, the 20th of "July, 1641, againſt Matthew Biſhop of Ely, "concerning whom there was no further pro-"ceedings upon this impeachment."—See before, p. 129 of this Volume, N° 12.

(4.) "The fourth was the impeachment of "John Earl of Bridgewater, by the Houſe of "Commons, the 30th of Auguſt, 1641, upon "the complaint of Sir John Corbet; upon "which impeachment there was no proceed-"ing to judgment."—See, in the Commons Journal of the 4th of June, 1641, the report of Sir John Corbet's caſe; and on that day, and the 29th of July, and 25th and 29th of Auguſt, the proceedings which the Lords here call an impeachment.

* The Lords had, on the 10th of January, upon the report from the Committee appointed to ſearch for precedents, allowed the Lord Mordaunt till this day, the 17th of January, for putting in his anſwer.—But on the 16th, the Commons ſend a meſſage to their Lordſhips, to put them in mind of the buſineſs of this impeachment: when the Lords, on the 17th of January, appoint a Committee to conſider in what manner Lord Mordaunt's anſwer ſhall be communicated to the Commons; they at the ſame time direct the Committee alſo to conſider, how to acquaint the Houſe of Commons of their unſeaſonable meſſage yeſterday, in putting them in mind of the Lord Mordaunt's buſineſs, when the Lords had appointed this day for that purpoſe.

municated.

municated by meſſage to the Commons on the 18th *.—On the 21ſt of January, the Commons deſire the Lords to appoint a day for proceeding on the impeachment.—The Lords immediately appoint the day; and, at the Lord Mordaunt's requeſt, aſſign him counſel, with an order for witneſſes.—Some of theſe witneſſes being Members of the Houſe of Commons, the Lords acquaint the Commons with this, by meſſage, on the 22d, "that the Commons may give "directions for their attendance at the hearing." The Commons immediately give leave for the Members named to attend, and at the ſame time order Mr. Seymour to deliver to the Lords the names of ſuch witneſſes as are to be examined to make out the impeachment; and that the Lords be deſired to make forth a ſummons for their attendance at the hearing; which the Lords immediately comply with.—The Commons, on the 22d, appoint the perſons who are to manage the evidence, at the hearing upon theſe articles.

30. On the 12th of November, 1667, a meſſage is brought up by Mr. Seymour to the Bar of the Houſe of Lords, impeaching the Earl of Clarendon of treaſon, and other high crimes and miſdemeanors, and deſiring he may be ſequeſtered from Parliament, and committed forthwith to ſafe cuſtody.—The Lords debate this matter on the 12th and 13th of November; and on the 14th reſolve, "That the Commons be informed, that the Lords have not complied with the deſires of the Houſe of Commons concerning Lord Clarendon's commitment, and ſequeſtering from Parliament, becauſe the Houſe of Commons have only accuſed him of treaſon in general, and have not aſſigned or ſpecified any particular treaſon:" And the Lords deſire a Conference on this ſubject †.—The Commons

* It does not appear from the Journals that the Commons made any replication to this anſwer.

† This Conference is held on the 15th of November, and, on being reported to the Commons, occaſions a debate on that day, and the 16th.—The ſubſtance of this debate is to be found in the proceedings againſt Lord Clarendon, in Vol. II. of the State Trials, p. 564—and in Grey's Debates, Vol. I. p. 41.

agree

agree to this Conference, and on the 16th of November appoint a Committee to draw up reaſons for the Commons proceedings *.—Theſe reaſons are reported in the Houſe of Lords on the 19th of November.—On the 20th, after reading precedents and much debate, the Lords reſolve †, "That they are not ſatisfied to comply "with the deſire of the Commons;" and they deſire a Conference with the Commons upon the ſubject-matter of the laſt Conference ‡.—On the 23d of November, the Commons agree to this Conference.—But before this meſſage can be delivered to the Lords, the Lords, on the 25th of November, ſend a meſſage to the Commons, by two of the Judges §, to acquaint them, "That upon the prece-"dents and reaſons of the Houſe of Commons, and the whole de-"bate thereupon, the Lords are not ſatisfied to comply with the "deſires of the Commons, for ſequeſtering and committing the Earl "of Clarendon, without any particular treaſon aſſigned or ſpeci-

* Theſe reaſons are entered in the Commons Journal of the 18th of November;—They declare, "That what can or ought to be done, "by either Houſe of Parliament, is beſt "known by the cuſtom and proceeding of "Parliament in former times; and that it "doth appear, by example, that, by the "courſe and practice of Parliament, the "Lords have committed ſuch perſons, as "have been generally charged for high trea-"ſon, though the particular treaſon hath not "been ſpecified—that great danger might "ariſe from the eſcape of the party, or his ac-"complices, and other inconveniences, if the "ſpecial treaſon was alleged;" and they conclude by urging,

"That the proceedings of inferior courts, "between the King and the ſubject, or be-"tween ſubject and ſubject, and the diſcretion "of Judges in ſuch courts, are bounded and "limited by the diſcretion of the Parliament "which truſts them; but the diſcretion of "the Parliament is and ought to be uncon-"fined, for the ſafety and preſervation of the "whole, which is itſelf; and it may therefore "do, for preſervation of itſelf, whatſoever is "not repugnant to natural juſtice."

† See, in the Lords Journal of the 20th of November, the proteſt of ſeveral Lords againſt this reſolution, with their reaſons for diſſenting.

‡ This meſſage from the Lords brought on a diſpute between the two Houſes; the Houſe of Commons alleging, "That the Lords "ſhould, in this inſtance, have aſked a *Free* "Conference."—The proceedings between the Houſes on the ſubject of this diſpute, are referred to before in this Volume, p. 36, and are inſerted in the Appendix, N° 6.

§ The Judges going to the Houſe of Commons to deliver this meſſage, are met by the Meſſengers of the Commons coming to agree to the Conference, and are by them directed to return to the Lords, without delivering their meſſage; which is afterwards communicated to the Commons at the Conference.

" fied."—On the 26th of November, the Commons demand a Free Conference, to which the Lords agree *; and which is held on the 28th †.—The Lords adhere to their firſt reſolution ‡; and, on the 3d of December, they receive from the Earl of Clarendon a petition and addreſs, in which, after ſtating his juſtification, he acquaints their Lordſhips that he has withdrawn himſelf from ſo powerful a proſecution.—The Commons adhere on their part; and, on the 5th of December, reſolve, (1.) " That when any ſubject ſhall be im-
" peached of High Treaſon, generally, by the Houſe of Commons,
" before the Lords in Parliament, and deſired to be forthwith ſe-
" cured, ſuch perſon impeached ought, for the ſafety of the King
" and kingdom, to be accordingly ſecured."—And (2.) " That
" when ſuch impeached perſon ſhall be ſecured, the Lords may
" limit a convenient time to bring his particular charge before them,
" for the avoiding delay in juſtice."

31. On the 16th of April, 1668, a Committee is appointed to draw up an impeachment againſt Sir William Penn, for embezzlement of prize goods; and they are to ſearch into precedents in relation to the ſuſpenſion of Members from ſitting whilſt they are under impeachment §.—On the 21ſt of April, the articles are

* Not however without referring it to their Committee of Privileges, to conſider precedents, and how a Free Conference may be granted without prejudice to the privileges of the Houſe.—The Earl of Denbigh, on the 27th of November, reports the precedents, and that the Members of the Committee were equally divided; ſo refer it to the determination of the Houſe.

† See the report of this Conference in the Lords Journal of the 29th of November; and, as it is an important ſubject, it is inſerted in the Appendix to this Volume, N° 6.

‡ This being communicated to the Commons, they reſolve, on the 2d of December, " That the Lords having not complied with " the deſires of the Commons for committing " and ſequeſtering the Earl of Clarendon, " upon their impeachment of treaſon, is an " obſtruction to the public juſtice of the king-" dom, and, in the precedent, of evil and dan-" gerous conſequence."—See the debate previous to this reſolution in the State Trials, Vol. II. p. 569—and in Grey's Debates, Vol. I. p. 54.

§ Upon the report from this Committee, Sir William Penn is, on the 21ſt of April, ſuſpended from ſitting in the Houſe whilſt the impeachment againſt him is depending; and the Committee are further directed to ſearch for precedents touching the expulſion of Members impeached.

reported,

reported, agreed to, and ordered to be ingroſſed.—They are delivered at a Conference on the 24th; and Sir William Penn is ordered to attend at the Lords Bar on the 27th, to be heard what he has to ſay thereupon.—The Lords alſo direct their Committee of Privileges to peruſe the Journals, and ſee what hath been the manner of proceeding againſt perſons impeached by the Houſe of Commons of miſdemeanors *.—On the 27th of April, Sir William Penn deſires further time, and to have Counſel aſſigned him; the Lords grant him a copy of his charge, allow him two more days to put in his anſwer, and aſſign him the Counſel, whom he names.—On the 29th he puts in his anſwer, a copy of which is ſent to the Commons. It is read on the 4th of May, and the Committee appointed to prepare the impeachment are ordered to draw up a replication †.

32. On the 5th of December, 1678, after the charges of impeachment againſt the Lord Arundel of Wardour, and the other Lords, for being concerned in the Popiſh Plot, are delivered at the Bar of the Houſe of Lords—a Committee is appointed, by the Commons, to prepare and draw up articles; and this Committee are impowered to ſend for perſons, papers, and records.—On the 14th of December, the firſt twelve perſons ‡ named on the Committee are appointed a Committee of Secrecy, to draw up the articles, and prepare the evidence §.

33. When

* This Committee make their report on the 27th of April of ſeveral precedents; from which it appears that the practice, with reſpect to the commitment of ſuch perſons, had been various.—Sir William Penn was not taken into cuſtody, either by the Lords or Commons.

† It does not appear that this Committee made any report, or that this matter proceeded farther.—This Sir William Penn was an Admiral; and was father to William Penn, the Quaker, the founder of the government of Pennſylvania. See the life of the ſon, in the Biograph. Britannica.

‡ The Houſe being acquainted, by Mr. Speaker, that Mr. Vaughan was the thirteenth perſon—it is ordered, That Mr. Vaughan be added to the ſaid Committee.

§ The accuſation againſt theſe Lords was, upon the evidence of Titus Oates, for accepting commiſſions from the Pope.—Lord Arundel, that of Chancellor—Lord Powys, Treaſurer—Lord Bellaſyſe, General—Lord Petre, Lieutenant

33. When the Commons, on the 23d of December, 1678, bring up the impeachment, with the articles of charge, againſt Lord Danby for High Treaſon, and other high crimes and miſdemeanors, they pray, "That he may be ſequeſtered from Parliament, "and forthwith committed to ſafe cuſtody."—The articles are read, and Lord Danby is heard in his place, in relation to the charge; and a queſtion being put, "Whether the Lord Treaſurer ſhall now "withdraw?" it paſſed in the negative.—On the 27th of December, the Lords debate this meſſage from the Commons, and propoſe ſeveral queſtions to the Judges *, which they anſwer: The queſtion then being put, "Whether Thomas Earl of Danby, Lord "High Treaſurer, who ſtands impeached by the Houſe of Com- "mon, ſhall be now committed?" it was reſolved in the negative †.

34. The

Lieutenant General—and Lord Stafford, Paymaſter General.—See the account of this in Burnet's Hiſtory, Vol. I. p. 430.

* Theſe queſtions were:

1. Whether the Judges do not always commit, or take bail, upon an accuſation, in due form, of miſpriſion of treaſon?

To which the Lord Chief Juſtice gives the unanimous anſwer from all the Judges,—"That the Court of King's Bench, upon an "accuſation of miſpriſion of treaſon, do always "commit, or take bail, as they think fit.

2. Whether, if any perſon ſhall be indicted by a grand jury of miſpriſion of treaſon, the Judges are not in juſtice obliged to commit him, without taking bail?

To which they anſwer unanimouſly, "That "the court of King's Bench may bail him."

3. Then it was propoſed to the Judges, "Whether the Judges can bail any perſon, "in caſe of miſpriſion of treaſon, wherein the "King's life is concerned?"

To which they ſeverally anſwer, "That "the court of King's Bench may take bail "for High Treaſon of any kind, if they ſee "cauſe."

† It appears from the Lords Journals, that the Lord Treaſurer continued to ſit, and to be preſent in the Houſe of Lords, till the 30th of December, when the King prorogued the Parliament, and afterwards, by a proclamation dated the 24th of January following, diſſolved it.—This refuſal of the Lords to commit Lord Danby, brought on a debate, which is in Grey's Debates, Vol. VI. p. 399.—See in Burnet's Hiſtory, Vol. I. p. 441, the ground on which the Lords proceeded, viz. "Whether this "ought to be received as an impeachment "for High Treaſon, only becauſe the Com- "mons had added the words *High Treaſon* in "it;—and that, even ſuppoſing the charge "to be true, it was not within the ſtatute."—It appears, that the diſpute between the two Houſes on this ſubject was the cauſe of the immediate prorogation, and diſſolution, of the Parliament.—Thus ended this Long Parliament, which had continued from the 8th of May, 1661, to the 24th of January, 1678–9,



a period

34. The Parliament, in which Lord Danby, and the five Popiſh Lords, had been impeached, being diſſolved by a proclamation of the 24th of January, 1678, and a new Parliament being ſummoned to meet on the 6th day of March following—on the 11th of March *, the Lords appoint a Committee, to conſider in what ſtate the impeachments brought up in the laſt Parliament now ſtand, and to report to the Houſe.—On the 12th of March, Lord Shafteſbury reports how the impeachments ſtood, as well againſt Lord Danby, as againſt the Popiſh Lords, with all the circumſtances that paſſed in the laſt Parliament †—This report is referred to the Committee of Privileges, to conſider and to report their opinion thereupon to the Houſe.—The King having, on the 13th of March, prorogued the Parliament for two days ‡—on the 17th of March, in the next ſeſſion, the order to the Committee of Privileges is repeated, to conſider of the ſtate of theſe impeachments. And on the 18th Lord Eſſex reports, and refers for a ſtate of the facts to the report made on the 12th of March; and that their Lordſhips are of opinion, "That the diſſolution of the laſt "Parliament doth not alter the ſtate of the impeachments brought

a period of almoſt eighteen years. In the interval, between the diſſolution of this Parliament and the meeting of the next, Charles the IId. granted a pardon to Lord Danby, the validity of which was ſo ſtrenuouſly diſputed by the Houſe of Commons, as will be ſeen in the ſequel of this work. Burnet's Hiſtory, Vol. I. p. 453, and the Appendix to this Volume, N° 7.

* The appointment of this Committee was in conſequence of the ſpeech of the Lord Chancellor Finch, afterwards Earl of Nottingham, on the firſt day of the ſeſſion:—"The King hath refuſed the petitions of the "Lords, who, during the interval of Parlia-"liament, deſired to be brought to their trial; "and, after ſo long an impriſonment, might "reaſonably have expected it: but his Ma-"jeſty thought it fitter to reſerve them to a "more public and conſpicuous trial in Parlia-"ment; for which cauſe their trial ought "now to be haſtened, for it is high time "there ſhould be ſome period put to the im-"priſonment of the Lords."—Lords Journal, the 6th of March, 1678.

† See this report in the Lords Journal of the 12th of March.

‡ This prorogation was made neceſſary by the diſpute which aroſe between the King and the Houſe of Commons, about his Majeſty's approbation of Sir Edward Seymour to be Speaker.—Upon this point, ſee Vol. II. of this work, p. 204 and 210.

"up

" up by the Commons in that Parliament."—On the 19th of March, the Lords, after much conſideration, agree with the Committee in this opinion *.

35. On the 20th of March, 1678, the Commons appoint a Committee of Secrecy, to take informations and prepare evidences, and to draw up articles againſt the Popiſh Lords impeached in the laſt Parliament, on the 5th of December, 1678; and they have power to ſend for perſons, papers, and records.—On the 3d of April, 1679, theſe articles are reported; and on the 7th of April are ordered to be carried to the Lords, by Lord Ruſſell.

36. On the 20th of March, 1678, the Commons reſolve, *nemine contradicente*, that a meſſage be ſent to the Lords to put them in mind of the impeachment againſt Lord Danby †, and to deſire that he may be forthwith committed to ſafe cuſtody.—On the 22d ‡, this

* It may be curious to remark, that almoſt on the very firſt day of the meeting of the Parliament ſummoned by James IId, viz. on the 22d of May, 1685, the Lords reſolve, " That this *order* of the 19th of March, 1678, " ſhall be reverſed and annulled as to im- " peachments."—There is a proteſt ſigned by Lord Angleſey, and other Peers, againſt this reſolution. (1.) " Becauſe it doth extraju- " dicially, and without a particular cauſe " before us, endeavour an alteration in a judi- " cial rule and order of the Houſe, in the " higheſt point of their power and judicature." (2.) " Becauſe it ſhakes and lays aſide an " order made and renewed upon long conſi- " deration, debate, report of Commons pre- " cedents, and former reſolutions, without " permitting the ſame to be read, though called " for by many Peers; and againſt weighty " reaſons, as we conceive, appearing for the " ſame; and contrary to the practice of former " times." (3.) " Becauſe it is inherent in " every court of judicature to aſſert and pre- " ſerve the former rules of proceedings before " them, which therefore muſt be ſteady and " certain; eſpecially in this high court, that " the ſubject and all perſons concerned may " know how to apply themſelves for juſtice: " The very Chancery, King's Bench, &c. " have their ſettled rules and ſtanding orders, " from which there is no variation."—See, upon this ſubject, the proceedings in the third Chapter of this Title, in the caſe of impeachment of the Lords Peterborough and Saliſbury, in October, 1690—and of the Duke of Leeds, the 24th of June, 1701.

† This impeachment, and the articles, had been carried up to the Lords in the former Parliament, on the 23d of December, 1678.

‡ The firſt meſſage had been delivered by Lord Cavendiſh, on the 21ſt of March; but the conſideration of it being adjourned by the Lords till the next day, occaſions this new meſſage.

meſſage

meſſage is repeated, and ſent up by Lord Anneſly *.—On the 24th of March, the Commons ſend up a third meſſage to the ſame purport:—the Lords return for anſwer, That they had ordered him into cuſtody, in compliance with the meſſage from the Commons on the 22d.—On the 16th of April, 1679, Lord Danby ſurrenders, and is committed to the Tower.

* On this day, the 22d of March, and previous to the meſſage brought by Lord Anneſly, the King came to the Houſe of Lords, and, in a ſpeech from the throne to both Houſes, acquaints them, "That he had granted his pardon, under his broad ſeal, to the Lord Treaſurer, before the calling of this Parliament, for ſecuring both his life and fortunes; and if there ſhould happen to be any defect therein, in point of form or otherwiſe, I will give it him ten times over, rather than it ſhould not be full and ſufficient for the purpoſe I deſign it.—I have diſmiſſed him my Court and Councils, and not to return."—See this ſpeech, and the debate upon it, in Grey's Debates, Vol. VII. p. 19, et ſubſ.—The Commons immediately appointed a Committee to repair to the Lord Chancellor, and to enquire into the manner of ſuing forth this pardon; and upon their report, on the 24th of March, 1678, (which is entered in the Journal, and contains many very curious circumſtances) they addreſs the King, repreſenting to "his Majeſty the irregularity and illegality of this pardon, and the dangerous conſequences of granting pardons to perſons under an impeachment."—It appears from this report, that the Lord Chancellor Finch acquaints the meſſengers from the Houſe of Commons, "That at the very time of affixing the ſeal to the parchment, he did not look upon himſelf to have the cuſtody of the ſeal. That he knew there was no memorial in any office whatſoever of this pardon, from the Secretary's office, till it came to his Lordſhip; but that it was a ſtamped pardon by creation."—The following obſervations of Lord Clarendon (written ſeveral years prior to this event) are very pertinent upon this ſubject:—"There is a protection, very gracious and juſt, which Princes owe to their ſubjects, when, in obedience to their juſt commands, upon extraordinary and neceſſary occaſions, in the execution of their truſts, they ſwerve from the ſtrict letter of the law, which, without that mercy, would be penal to them.—In any ſuch caſe, it is as legal (the law preſuming it will always be done upon great reaſon) for the King to pardon, as for the party to accuſe, and the Judge to condemn. —But for the ſovereign power to *interpoſe* and ſhelter an accuſed ſervant from anſwering, does not only ſeem an obſtruction of juſtice, and lay an imputation upon the Prince of being privy to the offence, but leaves ſo great a ſcandal on the party himſelf, that he is generally concluded guilty of whatſoever he is charged with.—And it is worthy the obſervation, that as no innocent man, who made his defence, ever ſuffered in thoſe times, (ſpeaking of the reigns of James the Iſt, and Charles the Iſt) by judgment of Parliament; ſo many guilty perſons, and againſt whom the ſpirit of the times went as high, by the wiſe managing their defence, have been freed from their accuſers, not only without cenſure, but without reproach."—Hiſtory of the Rebellion, Vol. I. page 7.

37. The

37. The Lords, upon the 24th of March, 1678, after ſeveral repeated meſſages from the Houſe of Commons to this purpoſe, order, "That Lord Danby, being impeached by the Houſe of "Commons of Treaſon, and other high crimes and miſdemeanors, "be taken into the cuſtody of the Gentleman Uſher of the Black "Rod*."—In the former Parliament, when the impeachment was brought up, the Lords, on the 27th of December, 1678, upon a queſtion put, had refuſed to commit him; or to order him to withdraw and be ſequeſtered from Parliament.—To prevent any miſchief ariſing from theſe precedents, the Lords, on the 10th of April, 1679, order that an entry be made in the Journal of this day, "That the vote of this Houſe, of the 23d of "December, 1678, concerning the Earl of Danby's not withdraw-"ing, after he had been heard in his place upon the articles of "impeachment brought up againſt him by the vote of the Houſe of "Commons; and the vote of the 27th of December, 1678, con-

* Lord Danby continued, under this commitment, a priſoner in the Tower, near five years (from April 1679 to February 1683.)—He made ſeveral applications to the court of King's Bench, at times when no Parliament was ſitting.—The arguments uſed by himſelf and his Counſel, upon thoſe occaſions, on the 27th of May, and the 29th of June, 1682, are collected, and publiſhed in the State Trials, Vol. II. p. 738.—On the laſt day of Hilary Term, 1683, he was bailed by the court of King's Bench; upon condition to appear in the Houſe of Lords, in the next ſeſſion of Parliament, and not to depart without leave of that court.—In a note in the 2d Vol. State Trials, p. 756, it is ſaid, "This was done on "purpoſe to be a precedent for the four "Popiſh Lords, who were bailed out that "ſame day."—With regard to the Courts of Weſtminſter Hall interfering, to ſet at liberty perſons committed by either Houſe of Parliament; ſee the following caſes, (1.) In 1ſt Mod. Rep. p. 144, a full account of the caſe of the Earl of Shafteſbury in 1677, who, having been committed by the Houſe of Lords for a contempt, was brought up by a Habeas Corpus; where, after ſeveral arguments, the Court of King's Bench determined, that they had no juriſdiction in the cauſe, and refuſed to bail him—"So he was remanded by the "Court." (2.) In Salkeld's Reports, Vol. II. p. 503, Paty's caſe, where the defendants had been committed by the Houſe of Commons in the cauſe of Aſhby and White, in which the court, Holt diſſentiente, refuſed to diſcharge them. (3.) See alſo in the State Trials, Vol. XI. p. 335, the caſe of Braſs Croſby, Lord Mayor, who had been committed to the Tower by the Houſe of Commons, and made application to the Court of Common Pleas in Eaſter Term, 1771, for his diſcharge from that commitment; which was refuſed both by the Court of Common Pleas, and by the Court of Exchequer.

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" cerning his Lordſhip's not being committed; ſhall not be drawn " into precedent for the future *."—And the Commons are to be acquainted at a Conference that this is done.

38. On the 7th of April, 1679, the Lords, on receiving the articles of impeachment againſt the five Popiſh Lords, directed their Committee of Privileges to conſider of the method and progreſs of the proceedings to be had upon their trial.—On the 8th the Committee make their report †; and the Lords allow Counſel

* On the 12th of April, 1679, Sir Francis Winnington reports what paſſed at a Free Conference which had been held on the 10th; amongſt other matters, That the Lord Privy Seal, Lord Angleſey, ſaid, " that in the tranſ- " action of this affair, there were two great " points gained by the Houſe of Commons:

" The firſt was, That impeachments made " by the Commons in one Parliament, conti- " nued from ſeſſion to ſeſſion, and Parliament " to Parliament, notwithſtanding prorogations " or diſſolutions:

" The other point was, That in caſes of " impeachment, upon ſpecial matter ſhewn, " if the modeſty of the party impeached " directs him not to withdraw, the Lords " admit, that, of right, they ought to order " him to withdraw, and that afterwards he " muſt be committed.

" His Lordſhip further obſerved, That a " Member of the Houſe of Commons men- " tioned the Earl of Clarendon's caſe at the " Free Conference in the morning.—But in " regard that caſe was general, and no ſpecial " matter ſhewn, it was not like this: and " therefore he did not underſtand the Lords " intended to extend the points of Withdraw- " ing, and of Commitment, to general im- " peachments without ſpecial matter alleged. " —For, if it ſhould be otherwiſe, the Lords " did not know how many of their Lordſhips " might be picked out of their Houſe on a " ſudden."

The Earl of Shafteſbury, ſaid:—" In the " firſt place, as to the right of the Commons, " That upon impeachments the Lords accuſed " ought to withdraw, and then be committed; " their Lordſhips did agree it was their " right, and well warranted by precedents of " former ages: and as to the diſtinction that " the Lord Privy Seal made, where the im- " peachments were general, and where ſpe- " cial matter was alleged, he ſaid, the Lords " gave no order to make any ſuch diſtinction, " for that general impeachments were not in " the caſe.—And the Duke of Monmouth, " and the Lord Fauconberg affirmed the " ſame, and that the Earl of Shafteſbury " was in the right, and delivered the true " ſenſe of the Lords.—He alſo ſaid, that by " the expreſſion which was ſent with reaſons " the other day from the Lords, viz.—' That " the Lords would not draw into example " the proceedings of the Earl of Danby, but " would vacate them,' they intend that to " extend only to the points of not-withdraw- " ing, and not-committing.—To this, that " the Commons replied, That they hoped " their Lordſhips did not think the Commons " did take it, as if they had now gained " any point; for that the points, which their " Lordſhips mentioned as gained, were no- " thing but what was agreeable to the ancient " courſe and methods of Parliament."

† One part of this report is, That the Lords may have Counſel to plead for them in matter

ſel to the priſoners, and addreſs the King to appoint a Lord High Steward.—On the 9th of April, the Lords are brought to the Bar *, and hear the articles of impeachment read;—they are allowed copies, and a time is fixed for delivering in their anſwers;—and that they ſhall have ſummons for the witneſſes they ſhall want upon their trial;—and they are acquainted that all the Peers ſhall be ſummoned †, to the end there may be a full Houſe at the ſaid trial.—The Lords then direct that theſe five Lords, being impeached, ſhall ſtand committed to the Tower, there to be kept in ſafe cuſtody, in order to their trial ‡.—On the 15th and 16th of April, Lord Bellaſyſe §, Lord Powys, Lord Stafford, and Lord Arundel, put in their pleas,

matter of law, but not in matter of fact.—And that (in caſes of impeachments, the Lord High Steward, or Lord Steward of the Houſehold, being of right to ſupply the place of Speaker in the Houſe of Peers) an addreſs be made to his Majeſty, that he will be pleaſed to appoint a Lord High Steward to ſupply the place of Speaker during the time of the ſaid trial.—It is ſaid, in a book, intitled, "Of the Judicature in Parliaments," chap. 5. p. 176, "All judgments for life or death are to be "rendered by the Steward of England, or by "the Steward of the King's Houſe.—And at "ſuch arraignment, the Steward is to ſit in "the Chancellor's place.—And all judgments "for miſdemeanors, are to be by the Chancellor, or by him who ſupplies the Chancellor's "place."—And afterwards, chap. 6. p. 180, "This I will ſay, the Chancellor never gave "judgment on life or death—and the Steward "never on miſdemeanors."—The work from whence theſe extracts are made, though called "A poſthumous treatiſe of Mr. Selden's," is of very little authority, as there are ſeveral miſtakes in it, and it is therefore very doubtful whether it was written by Selden.—In a copy of this book, in the library of Sir John Sebright at Beechwood, there is written in an old hand-writing, in the title-page, "This never was Mr. Selden's." It is however printed in the folio edition of Selden's Works, publiſhed by Dr. Wilkins, Vol. III. Tom. 2d, p. 1587, but with this obſervation in the Preface to his Engliſh Tracts, "It was "not publiſhed till 1681; it is a very maimed "piece, and as ſuch, does very little deſerve "to be placed among the works of ſo great a "man as Selden was."

* Four of the Lords appear, but Lord Bellaſyſe, being confined to his bed with the gout, is allowed to have a copy of the articles, and Counſel to be aſſigned him.

† The Lord Chancellor is directed to write to every Peer, who is able to travel without danger of life, forthwith to attend, under the penalty of being taken into cuſtody.

‡ There is alſo an order made for iſſuing a writ of certiorari, to bring in the ſeveral indictments, "whereby theſe five Lords have "been found guilty of High Treaſon:" which are brought in accordingly on the 29th of April.

§ A debate aroſe in the Houſe of Commons, on the 16th of April, Whether the Lord Bellaſyſe is actually and legally arraigned, having not *in perſon* delivered his anſwer at the Bar of the Houſe of Lords.—See this debate in Grey's Debates, Vol. VII. p. 117, 121, and 130, particularly the ſpeeches of Serjeant Maynard, Mr. Powle, and Mr. Seymour.—

pleas, ſtating the uncertainty of the ſeveral charges againſt them, and praying that they therefore may not be put to anſwer the ſaid impeachments. Lord Petre pleads Not guilty.—Theſe pleas are ſent to the Commons, and by them referred to their Committee of Secrecy; who report, on the 23d of April, (1.) That the Lord Bellaſyſe, being impeached of High Treaſon by the Commons, cannot make any anſwer but in perſon. (2.) That the ſeveral writings put in by the Lords Powys, Stafford, and Arundel, which they call pleas and anſwers, are not pleas or anſwers, but argumentative and evaſive, to which the Commons neither can nor ought to reply. (3.) The Commons therefore deſire, that the Lords will order and require theſe four Lords to put in their perfect anſwers, or in default thereof, that the Commons may have juſtice againſt them.—Theſe reſolutions being communicated to the Lords at a Conference, and theſe exceptions being by the Lords communicated at the Bar to the impeached Lords, they ſeverally, on the 25th and 26th of April, withdraw theſe anſwers, and plead Not guilty.—Theſe pleas are referred by the Commons to the conſideration of the Committee of Secrecy who prepared the articles; and on the 29th of April, the original pleas are re-delivered to the Lords *.

39. On the 2d of May, 1679, the Lords reſolve to take into conſideration, "Whether the Lords Spiritual are to vote in judi-"cature, in caſes of blood, or upon Bills of Attainder?"—On the

On the 25th of April, Lord Bellaſyſe is brought to the Bar of the Houſe of Lords, where he withdraws his former plea, and puts in a plea of Not guilty.

* Sir J. Trevor reports to the Commons, that, upon delivering back theſe anſwers to the Lords, the Lord Chancellor had demanded of him, "Whether the Commons were ready "to join iſſue?" to which he anſwered, "That "he had nothing of that kind in command "from this Houſe; but that the Committee of "Secrecy would, with all convenient ſpeed, "prepare their evidence to make good the "ſeveral charges and impeachments exhi-"bited againſt the Lords in the Tower."—On the 6th of May, a meſſage is ſent to the Lords, to acquaint them, "That the Com-"mons are ready to make good their articles "and charges."—The Members of the Committee of Secrecy are appointed to manage the evidence.—The Lords fix the day of trial for that day ſevennight.

7th of May, this queſtion is debated; but no reſolution come to upon it *.—Upon the 12th and 13th of May †, a further diſcuſſion upon this matter is had at the Joint-Committee, compoſed of Members of both Houſes, and appointed to conſider of propoſitions and circumſtances relative to the trial of the five Lords—and on the 13th the Lords reſolve, "That the Lords Spiritual have a right to "ſtay in court, in capital caſes, till ſuch time as judgment of death "comes to be pronounced ‡.—On the 16th of May, the Commons inſiſt, "That the Lords Spiritual ought not to have any vote in any "of the proceedings upon the impeachments againſt the Lords in "the Tower."—And upon that day, the Biſhops aſk leave of the Houſe of Lords, that they may withdraw themſelves from the trials of the ſaid Lords, with the liberty of entering their uſual proteſtation.—On the 17th of May, the Commons object to this proceeding, "as, if the Biſhops may have leave to withdraw, it implies a "right; which if they have, it is a new Court, that the Commons "cannot admit of:" And on the 19th they add, "That the Lords "might as well make the Judges part of that Court as the Biſhops,

* It appears from a copy of the warrant for the execution of the Lord Admiral Seymour, (which is entered amongſt the records in the 2d volume of Biſhop Burnet's Hiſtory of the Reformation, N° 32) that it was ſigned by Archbiſhop Cranmer; "which," ſays the Biſhop, "ſeems a little odd; as it, being in a "*cauſe of blood*, is contrary to the canon law; "but, it ſeems, Cranmer thought his conſcience was under no tie from theſe canons; "and ſo judged it not contrary to his function "to ſign that order." Burnet's Hiſtory of the Reformation, Vol. II. p. 100.

† With regard to this right of the Biſhops to attend, the Lords urge, amongſt other arguments, "That it belongs not to the Commons to be concerned in the conſtituting "parts of the court upon theſe trials; but "that the judgment of this matter belongs "entirely to the Lords; and when they have "judged it, the Commons cannot alter it; "and therefore ſhould not debate it."—The Commons preſſing this matter farther, the Lords conclude by ſaying, "That this being a matter of judicature, they declare, "that they will impoſe ſilence upon themſelves, and debate it no farther."—Lords Journal, the 13th of May.

‡ This vote of the 13th of May, "That "the Lord High Steward's pronouncing the "judgment of the court is, in time, after all "the Lords have voted; and conſequently the "Lords Spiritual may vote," is, the next day, the 14th, explained by the Lords to mean, "That the Lords Spiritual have a right to "ſtay, and ſit in court, till the court proceed "to the vote of Guilty, or Not guilty."

"in

" in this point."—On the 23d of May, the Lords adhere, " that " they will give no other anſwer, than what is already given, " concerning the Lords Spiritual *." They again inſiſt upon theſe votes on the 27th of May; and, the Commons adhering to their point, of excluding the Biſhops from voting in theſe preliminary queſtions, the King is obliged to come and put an end to the Seſſion by a prorogation †.

40. On

* This reſolution of the Lords brought on a Conference between the two Houſes, in relation to the points then depending; (1) with regard to the right of the Lords Spiritual to continue to ſit and vote—and (2) upon the queſtion touching the validity of the Earl of Danby's pardon being pleadable in bar of his impeachment.—The reaſons urged by the Commons are reported by Mr. Sacheverel on the 26th of May, and, as they contain much Parliamentary learning on the ſubject of impeachments, are inſerted in the Appendix to this Volume, N° 7.—See alſo the debate upon theſe queſtions in Grey's Debates, Vol. VII. p. 279, 292, 336; et ſubſ.—It is remarkable, that, (though this paper, containing the report, which was delivered to the Lords at a Conference, refers to *ſeveral other points*, that had been, and then were, in diſpute between the two Houſes relating to the law of impeachments; and though it was debated by the Lords for two days, the 26th and 27th of May) the Lords did not aſſign any anſwer to any part of this report, other than to reſolve to inſiſt upon their votes of the 13th and 14th of May, " That the Lords Spiritual " have a right to ſtay and ſit in court, till the " court proceed to the vote of Guilty or Not " guilty."—See upon this ſubject a book publiſhed in 1682, intitled, " An Argument " for the Biſhops Right, in judging in Capital " Cauſes in Parliament." By Thomas Hunt, Eſq;—and another work, intitled, " Of the " juriſdiction of the Biſhops in Capital " Cauſes;" written by Dr. Stillingfleet, afterwards Biſhop of Worceſter, and much commended by Biſhop Burnet. It is printed in Stillingfleet's works, Vol. III. p. 814, and was written in anſwer to a letter that had been publiſhed by Lord Holles, in 1679, " ſhewing, " that the Biſhops are not to be Judges in " Parliament in Caſes Capital." See the three firſt chapters of Dr. Stillingfleet's Tract, and his concluſions, p. 854.—As long ago, as in 1388, in the proceedings againſt Sir Robert Treſylian and others for High Treaſon, it is ſaid, " The Lord Chancellor, in the name of " the Clergy, in open Parliament, made an " oration, ſhewing " That they could not by " any means be preſent at proceedings, where " any cenſure of death is to be paſſed." The Clergy then delivered in a proteſtation to this purport to the Lords; and likewiſe ſent their proteſtation *to the Chapel of the Abbey, where the Commons ſat*; which was allowed of.—State Trials, Vol. I. p. 11.—See this Proteſtation in Rot. Parl. Vol. III. p. 236.—The Eccleſiaſtical Canon, by which it was ordained, " That no Biſhop, Abbot, or Clergyman, " ſhould judge any perſon to the loſs of life or " limb; or give his vote or countenance to " any other for that purpoſe," was decreed in a National Council, held at London in 1075, in the reign of Will. the Iſt.

*Carte's Hiſt. of Eng. Vol. I. p.* 430.

† By an article in the *Conſtitutions of Clarendon*, which were enacted in the reign of Henry the IId, in 1164, it is declared, " That the Archbiſhops, Biſhops, and other Spiritual Dignitaries ſhall be regarded as Barons of the realm;

40. On the 8th of April, 1679, the Lords, in conſequence of a report from the Committee of Privileges, appointed to conſider of the method and progreſs of the proceedings upon the impeachment of the five Lords, addreſſed the King, "That, in regard that, in "caſes of impeachment in Parliament, the Lord High Steward or "Lord Steward of the Houſehold being, of right, to ſupply the "place of Speaker in the Houſe of Peers, his Majeſty will be "pleaſed to appoint a Lord High Steward to ſupply the place of "Speaker of the Houſe of Peers, during the time of the trials of "the Lords, now priſoners in the Tower, upon their impeach-"ments."—On the 6th of May, they again addreſs the King, to acquaint him, That the Lords having appointed to hear the Earl of Danby, to make good his plea of his pardon to the articles of impeachment—and, having fixed a day for the trial of the five Popiſh Lords, deſire, "That his Majeſty will be pleaſed to appoint a "High Steward for the purpoſes aforeſaid, to continue during the "ſaid trials."—And the Lords by meſſage communicate this their proceeding to the Houſe of Commons.—The Commons, on the 7th of May, appoint a Committee to inſpect the Journals and ſearch precedents in relation to this meſſage.—On the 8th of May, Mr. Powle reports what is proper to be offered to the Lords upon this ſubject at a Conference, "That the Commons, ſuppoſing your Lordſhips "do intend, in all your proceedings, to follow the uſual courſe and "method of Parliament, cannot apprehend, what ſhould induce "your Lordſhips to addreſs his Majeſty for a Lord High Steward, "on Lord Danby's pardon, and the trial of the five Lords, as we "conceive the conſtituting of a High Steward is not neceſſary; "but that judgments may be given in Parliament, upon impeach-

realm; ſhall be bound to attend the King in his great councils; and ſhall aſſiſt at all trials, till the ſentence, either of death or loſs of members, be given againſt the criminal." M. Paris, p. 84.—Ten of the ſixteen articles agreed to in the Council at Clarendon were condemned by Pope Alexander the IIId; this however, was one of the ſix, which he tolerated, (Lord Littleton ſays) "not as good, but "leſs evil."—*Life of Hen.* II. *Book the* 3*d. Vol.* II. *p.* 397.

"ment,

" ment, without a High Steward."—On the 12th of May, the Lord Preſident, from the Joint-Committee of both Houſes, appointed * to conſider of propoſitions and circumſtances in reference to the trial of the Lords, reports, " That the Commons having " deſired to ſee the commiſſion prepared for a Lord High Steward " in this caſe, and alſo the commiſſions in the Earl Pembroke's " and Lord Morley's caſes"—the Lords Committees had anſwered, " The High Steward is but Speaker *pro tempore*, and gives his voice " as well as the other Lords; this changeth not the nature " of the court †; and the Lords declared, that they have power " enough to proceed to trial, though the King ſhould not name " an High Steward ‡.—This ſeemed to be ſatisfactory to the Com- " mons, provided it were entered in the Lords Journals, which are " records §."

41. On

* The Lords had twice, viz. on the 8th and 10th of May, refuſed to comply with the requeſt of the Commons, to appoint this Joint-Committee; but after a Free Conference, which was held on *Sunday* the 11th of May, the Lords agree to it.—The Committee ſat in the inner court of wards. See under title, " Joint Committees of Lords and Commons," Vol. III. p. 34.

† See a report from the Committee of Privileges, in the Lords Journal, of the 10th of January, 1689.

‡ On the ſame day the Lords came to the following reſolution, " It is declared and or- " dered by the Lords Spiritual and Tem- " poral, in Parliament aſſembled, That the " office of a High Steward, upon trials of " Peers upon impeachments, is not neceſſary " to the Houſe of Peers—but that that they " may proceed in ſuch trials, if a High Stew- " ard be not appointed according to their " humble deſire."—In fact, in the caſe of the Earl of Strafford, " the Houſe of Lords" appointed the Lord Steward of the Houſehold to be Lord High Steward for the occaſion.—See before, p. 168, N° 14.—On this ſubject of the Lord High Steward's Commiſſion, and the nature of the court where a Peer is tried for a capital offence, either on impeachment or indictment, before the King in Parliament (as diſtinguiſhed from the High Steward's court) conſult a very learned diſſertation of Mr. Juſtice Foſter's, publiſhed in his " Crown " Law," p. 138.

§ This order is reported from the Joint-Committee on the 13th of May, and is agreed to in the following terms; " That an office " of an High Steward, upon triàls of Peers " upon impeachments, is not neceſſary to the " Houſe of Peers; but that the Lords may pro- " ceed in ſuch trials, if an High Steward be not " appointed according to their humble deſire. " —There may be a commiſſion for an High " Steward, to bear date after the ſaid order, " ſo as the words in the commiſſion peruſed " be thus changed—viz. inſtead of 'ac pro " eo quod officium Seneſchalli Angliæ, cujus " preſentia in hac parte requiritur, ut acce- " pimus,

41. On the 3d of May, 1679, a meſſage from the Lords, to acquaint the Commons, That their Lordſhips having, at the deſire of the Commons, demanded of the Earl of Danby, "Whether he "would rely upon and abide by the plea of his pardon?"—Lord Danby had anſwered by word of mouth, "The plea which I have "put in, was put in by the advice of my Counſel; and my Counſel "tells me, that my pardon is a good pardon in law, and adviſe me "to inſiſt upon my plea put in; which I now do; and I do deſire, "that my Counſel may be heard, to make out the validity of my "pardon."—The Houſe of Commons, on the 5th of May, take this meſſage into conſideration, and reſolve, (1.) *Nemine contradicente*, "That the pardon pleaded by the Earl of Danby is illegal "and void, and ought not to be allowed in bar of the impeachment "of the Commons of England."—(2.) *Nemine contradicente*, That the whole Houſe will go up to the Lords Bar, and demand their judgment againſt the Earl of Danby—for that the pardon by him pleaded is illegal and invalid, and ought not to bar or preclude the Commons from having juſtice upon their impeachment *.—And a Committee

"pimus, jam vacat,' may be inſerted 'ac pro "eo quod Proceres et Magnates in Parlia-"mento noſtro aſſemblat. Nobis humiliter "ſupplicaverunt, ut Seneſchallum Angliæ pro "hâc vice conſtituere dignaremur.'"—See the Lords Journal of the 13th of May, and the report of this tranſaction in the Commons Journal of the 15th of May.—The commiſſion, which had been iſſued under the Great Seal for conſtituting a High Steward for the trial of Lord Danby, is ordered to be recalled; and a new commiſſion to be iſſued, worded according to this alteration; and to bear date after this reſolution.

* On the 9th of May, the Lords having appointed a day for hearing Lord Danby's Counſel, to make good his plea of pardon, the Commons reſolve, That no Commoner whatſoever ſhall preſume to maintain the validity of the pardon pleaded by the Earl of Danby, without the conſent of this Houſe firſt had; and that the perſons, ſo doing, ſhall be accounted betrayers of the liberties of the Commons of England.—See the Journal of the Lords of the 10th of May, reſpecting this reſolution.—See in Vol. VII. of Grey's Debates, the debates upon this, and the ſeveral other very important queſtions, that aroſe out of theſe impeachments.—In the year 1791, pending the trial of the impeachment of Mr. Haſtings, a ſmall pamphlet was printed and publiſhed, intitled, "A treatiſe of the King's power of "granting pardons in caſes of Impeachment," by Heneage Earl of Nottingham, Lord High Chancellor.—In the advertiſement prefixed to it, is the following entry,—"There is a memorandum in the firſt leaf of this tract in the hand writing of Nicholas Hardinge, Eſq. Clerk

Committee is appointed to prepare and draw up reaſons, why this Houſe is of this opinion, upon theſe two points *.—On the 6th and 8th of May, the Lords appoint a day for hearing the Earl of Danby, by his Counſel, to make good his ſaid plea.

42. On the 5th of May, 1679, the Commons, having reſolved, "That the Lord Danby's pardon is illegal and void, and ought not "to be pleaded in bar of his impeachment †;" and that therefore they

Clerk of the Houſe of Commons, in the following words, "This treatiſe was tranſcribed "from a MS. communicated to me, by the "right honourable Arthur Onſlow, Speaker "of the Houſe of Commons; which was "tranſcribed from a manuſcript communi-"cated to him by Daniel now Earl of "Winchelſea and Nottingham, who aſſured "Mr. Onſlow, that it was written by Lord "Chancellor Nottingham, upon the occaſion "of Lord Danby's pardon." "N. Hardinge "Dec. 1, 1731."—It is very properly obſerved in that advertiſement, "That the "opinion delivered by Lord Nottingham in "this treatiſe, viz. "That impeachments do "not remain in ſtatu quo from Parliament to "Parliament," is very different, from that "which he delivered and acted on upon the "trial of Lord Stafford."—Another obſervation is very obvious on the doctrine contained in this pamphlet, which is, That, however clear Lord Nottingham might be, when he wrote this treatiſe, "That the King might "legally grant a pardon, which might be "afterwards pleaded in bar of any impeach-"ment," it appears from the report of the Committee of the Houſe of Commons, (on the 24th March, 1678, who were ordered to attend his Lordſhip, to enquire into the manner of ſuing forth Lord Danby's pardon) that he was ſo cautious on that occaſion, as to be able to aſſure the Houſe of Commons, "That "he neither adviſed, drew, or altered one "word of it." And afterwards, when the King ordered the ſeal to be affixed, "it was "done by the perſon who uſually carries the "purſe; and that, at that very time, he did "not look upon himſelf to have the cuſtody "of the Seal."

*Lord Nottingham's Treatiſe was printed for T. Payne at the Mews Gate.*

* See theſe reaſons, as reported by Mr. Sacheverel, in the Commons Journal of the 26th of May, and in the Appendix to this volume, N° 7.

† On the 2d of February, 1688, one of the general heads reported, from the Committee appointed to conſider of ſuch things as are abſolutely neceſſary for the better ſecuring of our religion, laws, and liberties, is, "That "no pardon is to be pleadable to an impeach-"ment in Parliament;" and this is agreed to by the Houſe.—This head is, however, left out of the report which is made on the 7th of February, as is there ſtated, "for divers "weighty reaſons." It appears, from Grey's Debates, Vol. IX. p. 72, that theſe reaſons were, that the Committee were divided in opinion, Whether this declaration upon this point ſhould be made.——Subſequent to this, the Houſe of Commons, on the 4th of June, 1689, in conſidering the heads of a Bill of Indemnity; and a debate ariſing, Whether a pardon is pleadable in bar of an impeachment in Parliament? reſolve, "That it is the opinion "of this Houſe, that a pardon is not pleadable "in

they will go up to the Lords, and demand judgment againſt the Lord Danby; appoint a Committee to prepare a form of words *, to be delivered at the Bar of the Houſe of Lords, touching the illegality and invalidity of the ſaid pardon, and the judgment to be demanded by the Houſe againſt the ſaid Earl.—The Speaker accordingly, with the Commons, go up and demand judgment †; notwithſtanding which, the Lords, on the 6th of May, appoint a day for hearing Lord Danby to make good his ſaid plea.

43. On the 8th of May, 1679, the Commons propoſe to the Lords, that a Committee of both Houſes may be nominated, to conſider of the moſt proper ways and methods of proceedings upon impeachments of the Houſe of Commons, according to the uſage of Parliament—in order that the inconveniences may be avoided, which might otherwiſe ariſe from the ſeveral interruptions and delays in the proceeding.—This propoſal the Lords refuſe to comply with, " becauſe they do not think it conformable

" in bar of an impeachment in Parliament." —See the debate upon this queſtion in Grey's Debates, Vol. IX. p. 281.—Sir William Williams ſays, " If a ſubject be murthered, the " next of kin may bring an appeal; and for " this reaſon an appeal is not pardonable, be- " cauſe it is at the ſuit of the ſubject; and an " impeachment is an appeal of all the Com- " mons of England."—See alſo Mr. Hawles's ſpeech, p. 285.——However, by the ſtat. 12 and 13 William III. ch. 2. ſect. 3, it was afterwards enacted, " That no pardon under the " Great Seal of England be pleadable to an " impeachment by the Commons in Parlia- " ment."

* This form is reported; and is as follows:

My Lords,

The Knights, Citizens, and Burgeſſes, in Parliament aſſembled, are come up to demand judgment in their own names, and the names of all the Commons of England, againſt Thomas Earl of Danby, who ſtands impeached by them before your Lordſhips of High Treaſon, and divers high crimes and miſdemeanors; to which he has pleaded a pardon—which pardon the Commons conceive to be illegal and void; and therefore they do demand judgment of your Lordſhips accordingly.

† The entry in the Lords Journal of the 5th of May is, " The Speaker, with the " Commons, being come up to the Bar (but " the Mace was not advanced) ſaid," &c.—See alſo in Grey's Debates, Vol. VII. p. 185, the account of the form of the Commons demanding judgment againſt the Earl of Middleſex and Lord Chancellor Bacon, " That the " Commons came with their Mace declined, " held down."

" to

" to the rules and orders of proceedings of this Court, which is, " and ever muſt be, tender in matters of judicature."—The Commons, on the 10th of May, acquaint the Lords, " That things " ſtanding thus upon this anſwer, they cannot proceed upon " the trial of the Lords, before the method of proceeding be " adjuſted between the two Houſes."—The Lords, however, again refuſe to agree to the appointment of a Joint-Committee.—This brought on a Free Conference, which was held on Sunday the 11th of May; the effect of which was, to induce the Lords to agree to the Committee; which was accordingly appointed, conſiſting of twelve Lords and twenty-four Commoners *, to conſider of propoſitions and circumſtances, in reference to the trials of the Lords in the Tower.

44. On the 10th of November, 1680, the Commons reſolve, they will proceed in the proſecution of the Lords in the Tower, and will begin with the Lord Viſcount Stafford †; and on the 12th of November, they communicate this reſolution to the Lords, and deſire the Lords to appoint a day for the trial ‡. The Lords im-

* What were the ſubjects of diſcuſſion at this Committee, and in what manner they were reported to both Houſes, with the inſtructions which were given from time to time by either Houſe to their Committee, will appear from conſulting the Journals between the 11th of May and the 27th, the day on which the Parliament was prorogued.

† This was in the new Parliament, the third called by Charles II. which had been ſummoned to meet on the 7th of October, 1679, but which had been prorogued by his Majeſty's commiſſion from time to time till the 21ſt of October in the next year, 1680.—The Houſe of Commons, on the 10th of November, appointed a Committee to inſpect the Journals of the two laſt Parliaments, relating to the impeachments of the Lords in the Tower.

‡ The Commons, at the ſame time, addreſs the King, that he will give order for the iſſuing out a ſum of money, for defraying the charges of ſummoning the witneſſes, and other expences incident in the proſecution and trial of the Lords in the Tower.—And they order, that ſuch money as ſhall be iſſued for the uſes aforeſaid be depoſited in the hands of Mr. Charles Clare.—Mr. Secretary Jenkins reports his Majeſty's anſwer, on the 13th of November, " That he had directed *a hundred* " *pounds* to be iſſued accordingly."

mediately appoint the day; and addreſs the King that he will appoint an High Steward.

45. On the 23d of November, 1680, the Lords appoint a Committee, to adviſe and conſider of what directions, rules, and methods are fit to be obſerved for the preſervation of order and regularity in the trial of Lord Stafford *.

46. On the 25th of November, 1680, the Commons ſend a meſſage to the Lords, to deſire that a Committee of the Lords may be appointed, to join with the Committee of the Commons, for adjuſting the methods and circumſtances relating to the trials of the Lords in the Tower—to which, on the 27th of November, the Lords agree †.

47. On the 29th of November, 1680, at a meeting of this Joint-Committee, the Commons are permitted to have inſpection of the Commiſſion of the Lord High Steward ‡; and are acquainted that the Biſhops do not intend to go

* See the report from this Committee in the Lords Journal of the 26th of November, part of which is directed to be ſent to the Commons.—This meſſage is ſent by Sir Timothy Baldwin, Knight, and the Clerk of the Parliaments. Theſe meſſengers not being the uſual meſſengers from the Lords, the Commons appoint a Committee to inſpect the Journals of this Houſe, and ſearch precedents touching the bringing of meſſages from the Lords Houſe; and that, in the mean time, the Clerk do reſpite the entry of this meſſage in the Journal.—This meſſage is not entered in the Commons Journal.—In the 8th vol. State Trials, Appendix, N° 40, there is a paper inſerted, written by Mr. Gregory King, *Lancaſter* Herald, intitled, "Method of proceedings upon the trial of a Peer."

† The Committee appointed by the Lords conſiſts of five—that of the Commons of ten.

‡ This is in conſequence of a queſtion aſked at the Committee by the Commons, Whether the Commiſſion of the Lord High Steward was drawn in the ſame manner, as that in the laſt Parliament?—and, Whether the clauſe—*Cujus preſentia in hac parte requiritur*, was inſerted? The Lords anſwer, That the Commiſſion differs not from that paſſed in the laſt Parliament, otherwiſe than inſerting the Lord Stafford's name inſtead of the five Popiſh Lords.—See before the notes in p. 186.

into

into Weſtminſter-hall, to be preſent at the trial of the Lord Stafford *.

48. On the 29th of November, 1680, it is agreed at the Joint-Committee, upon the objection made by the Commons to one of the rules laid down by the Lords, viz. "That when the Com-"mons ſhould aſk any queſtions at the trial, they ſhould apply "themſelves to the Lord Steward," that the Managers ſhould ſpeak to the Lords as a Houſe †, and ſay "My Lords," and not to the Lord High Steward, and ſay, "My Lord," or "Your Grace."

49. On the 29th of November, 1680, the Houſe being informed, from the Committee appointed to prepare evidence againſt the Lords

* See, in the Lords Journal of the 29th and 30th of November, the declaration and proteſtation of the Biſhops, delivered by the Biſhop of London, with which (it is ſaid in the Journal) the Committee of the Commons were ſatisfied.—The proteſtation is as follows: —"The Lords Spiritual of the Houſe of "Peers do deſire the leave of this Houſe to "be abſent during the trial of the Lord Vif-"count Stafford; by proteſtation ſaving to "themſelves and their ſucceſſors, all ſuch "rights in judicature as they have by law, "and by right ought to have."—It appears, from the Lords Journal, that, during Lord Stafford's trial, ſeveral Biſhops were preſent in the Houſe of Lords in the morning, but that none of them went down into Weſtminſter-hall. —On the trial of the Earl of Warwick "for "murther," on the 28th of March, 1699, in Weſtminſter-hall, it appears, that the Biſhops went in the proceſſion from the Houſe of Lords, and were preſent during the trial; but that, when the evidence was cloſed, and the Lords had adjourned to their own Houſe, and before they proceeded to conſider of the method of the Peers giving judgment, the Archbiſhop of Canterbury, in behalf of himſelf and the reſt of the Biſhops, offered a proteſtation, "deſiring leave to be abſent, but ſaving "to themſelves and their ſucceſſors, all ſuch "right in judicature, as they have had by law, "and of right ought to have." Then he aſked leave to withdraw; to which the Lords agreed; and the Biſhops withdrew accordingly.

† The exception taken by the Committee of the Commons, was, that the Lord High Steward is not a *neceſſary* part of the court, but is *only* as Speaker of the Houſe of Lords. —The Lords, conformably to this doctrine, on the 29th of November, order, "That the "Lord Stafford ſhall be directed to apply him-"ſelf to the Lords, and not to the Lord High "Steward, as often as he ſhall have occaſion "to ſpeak at his trial." This direction aroſe from the diſtinction mentioned before by Mr. Juſtice Foſter, (where a trial of a Peer is held in full Parliament) between "the "Court of the King in Parliament" and the Court of the "High Steward."—Earl Ferrers's caſe, Crown Law, p. 141.

in

in the Tower, that a certain perſon at Shrewſbury, being ſummoned to appear as a witneſs in the trial, had refuſed ſo to do, and that it was not convenient that his name ſhould yet be publicly known; it is ordered, That Mr. Speaker do iſſue his warrant to the Serjeant at Arms, to bring the ſaid perſon in cuſtody; he to be named to Mr. Speaker from the Committee for that purpoſe.

50. On the 29th of November, 1680, the Houſe appoint a Committee to view the ſcaffold in Weſtminſter Hall. They had previouſly, on that day, reſolved to attend as a Committee upon Lord Stafford's impeachment; and the Members are to ſit together in the place prepared for them, without mingling with any other perſons.—The Commons, on the ſame day, give leave to Sir Walter Bagot, a Member, to appear as a witneſs on the trial.

51. On the 23d of December, 1680, Mr. Seymour delivers in his anſwer to the articles of impeachment in writing; and the Lords immediately tranſmit it to the Houſe of Commons.—On the 3d of January *, the Commons appoint a Committee to prepare evidence againſt Mr. Seymour, and manage the ſame at his trial †.—This Committee do not make any report; and on the 8th of January, the Lords ſend word, That they have fixed the 15th of January for Mr. Seymour's trial, "that the Commons may reply, if they think fit."

52. On the 7th of January, 1680, when the articles of impeachment for high treaſon, and high crimes and miſdemeanors, are exhibited againſt Sir William Scroggs, Lord Chief Juſtice of the King's

* This was not until the Lords had ſent a meſſage to the Commons to acquaint them, that Mr, Seymour had preſented to them a petition, deſiring a day might be fixed for his trial—and that their Lordſhips, finding no iſſue by replication of the Commons, had thought fit to give the Commons notice thereof.

† This Committee have power to ſit de die in diem, and to ſend for perſons, papers, and records.—They are not inſtructed to prepare a replication.

Bench,

Bench, in which the Commons pray, "That he may be committed to ſafe cuſtody," the Lords refuſe putting the queſtion, Whether he ſhall be committed or not *?—and order him to find ſecurity for his appearance, to attend upon the court from time to time, till he be diſcharged of his impeachment.

53. On the 8th of January, 1680, the Commons reſolve, That a Committee be appointed to inſpect the Journals of both Houſes, and precedents to juſtify and maintain, That the Lords ought to commit perſons to ſafe cuſtody, when impeached for High Treaſon by the Commons in Parliament †.

54. On the 24th of March, 1680, Sir William Scroggs, Chief Juſtice of the King's Bench, delivers in his anſwer to the articles of impeachment of "High Treaſon," which had been brought up againſt him in the former Parliament ‡.—On the 25th of March, this anſwer is ſent to the Commons, with a petition from Sir William Scroggs §, deſiring a ſpeedy trial ‖.

55. When the meſſage for impeaching Edward Fitzharris for High Treaſon is carried up to the Lords Bar, on the 26th of March,

* Several Lords enter their reaſons for diſſenting to this refuſal; one of which reaſons is, "That this matter hath been twice adjuſted between both Houſes, viz. in the caſes of the Earl of Clarendon, and the Earl of Danby."—The ground upon which the Lords proceeded, in not committing Sir William Scroggs, was the ſame doubt that had been before entertained in the Houſe of Commons on voting the articles, "Whether the charges alleged amounted to the crime of High Treaſon."—Grey's Debates, Vol. VIII. p. 287.

† See the debate preparatory to this reſolution, in Grey's Debates, Vol. VIII. p. 285.

‡ Theſe articles had been brought up on the 7th of January, 1680.—The Parliament was diſſolved on the 18th of January.—And the new Parliament met on the 21ſt of March, at Oxford.

§ Neither this anſwer or petition allege any objection, on the part of the Chief Juſtice to the competency of the Houſe of Lords to try him for the crime of High Treaſon, though a Commoner; or, that the diſſolution of Parliament had made any alteration in the ſtate of the impeachment.

‖ On the 24th of March, the Lord Danby petitions the Lords, complaining that he had been detained a priſoner in the Tower, for above three and twenty months laſt paſt, and deſiring to be bailed.

1681,

1681, Mr. Attorney General acquaints the Houſe, "That he had an order from his Majeſty, dated the 9th of March, to proſecute Fitzharris at law, and that accordingly he had prepared an indictment againſt him at law *:" Upon this the Lords reſolve, "That "Fitzharris ſhall be proceeded with according to the courſe of "the common law, and not by way of impeachment in Parlia- "ment at this time †."

56. On

* On the 22d of March, 1688, Mrs. Fitzharris petitions the Houſe of Commons touching the caſe of her huſband; this petition is referred to a Committee on the 15th of May, 1689, who report on the 15th of June; and on their report, the Houſe recommend this caſe of Mrs. Fitzharris to his Majeſty.

† This reſolution of the Lords produced ſeveral reſolutions on the part of the Commons, and a proteſt from ſeveral Peers, relating to the right of the Commons to proceed in this caſe by impeachment; which are inſerted in the Appendix, N°. 8.—See alſo the debate upon this ſubject, in Grey's Debates, Vol. VIII. p. 332.——Biſhop Burnet ſays, "This pretence, of the Lords having no right "to try a Commoner upon an impeachment "for High Treaſon, was furniſhed by Lord "Nottingham; and was grounded upon the "caſe of Simon de Beresford, in the 4th Ed- "ward III.;" (which ſee before in this Vol. p. 54.)—The Biſhop very pertinently obſerves, "That if this doctrine were true, and "good law, it would be a method offered to "the Court to be troubled no more with im- "peachments, by employing only Common- "ers." So Sir William Jones ſays, "If "this was ſo, it would be in the power of the "King, by making only Commoners Mini- "ſters of ſtate, to ſubvert the Government by "their contrivances when they pleaſed. Their "greatneſs would keep them out of the reach "of ordinary courts of juſtice; or their trea- "ſons might not perhaps be within the ſta- "tute, but ſuch as fall under the cognizance "of no other court than the Parliament; and "if the people might not of right demand "juſtice there, they might, without fear of "puniſhment, act the moſt deſtructive vil- "lainies againſt the kingdom; it would alſo "follow, that the ſame fact, which in a Peer "is treaſon, and puniſhable with death, in a "Commoner is no crime, and ſubject to no "puniſhment,"—Lords Debates, printed in 1742, Vol. I. p. 296, 298.—See, in the 1ſt vol. of Lords Debates, p. 256, an account of this Fitzharris, and of the tranſaction in which he was engaged, which brought on this impeachment.—In the ſame volume, p. 264, is a pamphlet, written by Sir William Jones, intitled, "A juſt and modeſt Vindication of the "Proceedings of the two laſt Parliaments," publiſhed in 1681; in which, p. 296, the queſtion is diſcuſſed, "Whether, by the law and "cuſtom of Parliament, the Lords ought to "try Commoners impeached by the Commons "in Parliament." The proceedings in Parliament againſt Fitzharris, and in the court of King's Bench upon his arraignment and his trial, are all publiſhed in the State Trials, Vol. III. p. 224, et ſubſ.—It appears that the foreman of the jury doubted their competency to pronounce a verdict in this caſe, on account of the impeachment by the Houſe of Commons, and ſuggeſted this difficulty to the court, before the jury withdrew—but this objection was over-ruled by the Judges. In the courſe of thoſe proceedings, Sir William Williams ſays, "By the way, I think it will not be denied, but "that the Commons in Parliament may im- "peach any Commoner of treaſon, before the "Lords in Parliament. I take that to be ad- "mitted;

56. On the 19th of May, 1685, the firſt day of the firſt Parliament of King James the IId, the Earl of Danby, Lord Powys, Lord Arundel, and Lord Bellaſyſe (who had been bailed by the court of King's Bench in 1684, under a recognizance to appear in the Houſe of Lords the firſt day of the next Parliament) were called to the Bar. They then petition to be diſcharged; and the Lords order, That their appearance ſhall be recorded, and that they ſhall attend till further order *.

57. On the 22d of May, 1685, upon conſideration of the caſes of the Earl of Powys, Lord Arundel, Lord Bellaſyſe, and the Earl of Danby, the queſtion was propoſed, "Whether the order of "the 19th of March, 1678 †, ſhall be reverſed and annulled as to "Impeachments?" and reſolved in the affirmative.

"mitted; and I don't find that Mr. Attorney "General denies it, or makes any doubt about "it." State Trials, Vol. III. p. 240.—See Remarks on Fitzharris's trial, by Sir John Hawles, afterwards Solicitor General, in the State Trials, Vol. IV. p. 165.—and Hume's account of this affair in Hiſt. Eng. Vol. VI. Ch. 6. p. 332 and 336.

* On the 25th of May, the indictments which had been found againſt the Popiſh Lords, are ordered to be produced to the Attorney General, who had received an order from the King to enter a Noli Proſequi; and the bail given by them in the King's Bench are diſcharged.—And on the 1ſt of June, the Lords order, "That Lord Danby, Lord "Powys, Lord Arundel, Lord Bellaſyſe, and "Lord Tyrone, as alſo all perſons, Peers or "others, that were bail for the appearance of "the ſaid Lords, be, and are hereby diſ-"charged."

† See before, p. 182, note *.

## V. *Proceedings on the Trial.*

1. ON hearing evidence by the Lords againſt Sir Giles Mompeſſon, it does not appear, that the Commons were ever preſent, or appeared as parties, except firſt at the Conference, where they ſtate the grievances of which they complained *, and ſhewed how Sir Giles Mompeſſon was concerned in them; and afterwards when they demanded judgment. The Lords ſummon the evidence †, and examine them upon oath; and when the enquiry is gone through, on the 26th of March, 1621, the collection of offences upon the ſeveral heads are read, and the Lords come to reſolutions upon the ſeveral facts, and "that all other his offences and abuſes were duly proved againſt him." They afterwards enter into a long debate what his puniſhment ſhould be—and, having determined, they ſignify to the Commons, "That if they, with their "Speaker, will, according to the ancient cuſtom of Parliament, "come to demand of the Lords, That judgment be given againſt

* It appears from the Journal of the 6th of March, 1620, and from the Parliamentary Proceedings, 1620-1, Vol. I. p. 123, that the manner of delivering this charge was, to be divided into ſix parts, and that ſix Members ſhould every one deliver his part to the Lords.—Sir Dudley Diggs to make the introduction—Mr. Crewe, Mr. Finch, and Mr. Hackwell, to open and ſtate the matters complained of—Sir Edwin Sandys to make a collection or amplification of all theſe buſineſſes—and Sir Edward Coke to make the concluſion, by declaring to the Lords precedents, how heretofore others, offending in like manner, have been by the Houſes of Parliament puniſhed.—See, upon the 8th of March, Sir Edward Coke's report of the precedents he had found, as well of judicature as of puniſhment.

† But on the 15th of March, 1620, the Lord Chancellor moves, That the Lords Committees, to whom the ſeveral heads of grievance had been referred, ſhould confer with Mr. Thomas Crewe, Mr. Recorder Finch, and Mr. Hackwell, "for that theſe gentlemen, "being Members of the lower Houſe, had "taken pains in the ſeveral examinations of "theſe grievances."—And on the 26th of April, 1621, upon hearing the charge and proofs againſt Sir Francis Michell, Sir Randolph Crewe (then an aſſiſtant to the Houſe of Lords, as King's Serjeant, and who was afterwards Chief Juſtice) came to the Clerk's table and opened the offences and the proofs.—Sir Francis Michell was then heard, and made his anſwer to each charge.

"Sir

" Sir Giles Mompeſſon, for the heinous offences by him com-
" mitted, they ſhall be heard."—To which the Commons anſwer, They will come and demand it.

2. See, in the Lords Journals from the 20th of March, 1620, to the third of May, 1621, the proceedings againſt the Lord Chancellor Bacon, upon the charge exhibited againſt him by the Commons *.—On the 24th of April, it was debated, Whether the Lord Chancellor ſhould be brought to the Bar, to hear the charges? or that, reſpect being had to his perſon (as yet having the King's Great Seal) the charge ſhould be ſent in writing?—and agreed it ſhould be ſent in writing.—On the 30th of April, Lord Bacon ſends in writing his confeſſion and humble ſubmiſſion †.

3. On the 24th of April, 1624, the Archbiſhop of Canterbury reports from the Committee appointed to examine into the matters charged againſt the Lord Treaſurer Middleſex, a part of the charge

* Neither the Commons or any Committee were preſent as accuſers during any part of theſe proceedings; they exhibited the complaints at a Conference, and tranſmitted ſuch proofs as had come out before them, upon an examination taken by the Grand Committee for Courts of Juſtice; upon which, they deſire, If the Chancellor be found guilty, he may be puniſhed; if not guilty, the accuſers to be puniſhed.—There were no further proofs given of theſe accuſations, nor were they opened or urged in the Houſe of Lords, except by the report of the Conference; this being rendered unneceſſary by the Chancellor's ſending his humble confeſſion and ſubmiſſion.—The Commons come, on the 3d of May, to demand judgment.—See the proceedings in both Houſes againſt Lord Bacon, collected in the State Trials, Vol. I. p. 353.

† This ſubmiſſion and confeſſion (which ſee before in the Notes, p. 100,) being expreſſed only in general terms, was not conſidered by the Lords as full and ſatisfactory, Lord Bacon therefore ſent another paper, intitled, " The humble confeſſion and ſubmiſ-
" ſion of me *The Lord Chancellor*."—" Upon adviſed conſideration of the charge, deſcending into my own conſcience, and calling my memory to account, ſo far as I am able, I do plainly and ingenuouſly confeſs, that I am guilty of corruption; and do renounce all defence, and put myſelf on the grace and mercy of your Lordſhips." And he then enters into all the particular charges, which he confeſſes.—State Trials, Vol. I. p. 361.

arifing out of the examination of the witneſſes;—this is ordered to be ſent * to the Lord Treaſurer, and that he do appear on Thurſday next to anſwer his charge at the Bar.—On the 26th of April, a Committee is appointed to ſearch for precedents, in what manner the parties complained of have anſwered †; and the Lord Treaſurer having, on the 27th, applied by petition for Counſel, the Lords give leave that he may uſe what Counſel he pleaſe, to adviſe him for his defence; but that it ſtands not with the order of the Houſe, to allow Counſel at the Bar in caſes of this nature ‡.

4. The Duke of Buckingham having been by the Commons impeached of ſeveral crimes; and articles being exhibited againſt him, he, on the 8th of June, 1626, delivers in to the Lords his

* The following memorandum is ordered to be entered in the Lords Journal of the 24th of April; "Whereas, by the ancient cuſtoms "of this Houſe, the parties accuſed and com- "plained of are to receive their charge at the "Bar; yet, at this time, in regard the Prince "and many other Lords are attending neceſ- "ſarily the King at Windſor, for the ſolemniz- "ing Saint George's feaſt, and cannot return, "to be here till Thurſday next; therefore, "for gaining of time, and alſo that the Lord "Treaſurer might have his time to prepare "his anſwer, it was agreed that his charge "ſhall be ſent unto him in writing.—But this "to be no precedent for the future."

† On the 27th of April, the Earl of Bridgwater reports from this Committee, That they did not find by any precedent, that any, though a Member of this Houſe, did anſwer by his Counſel; and that divers Members of this Houſe have anſwered in perſon and without Counſel; and that Counſel was denied unto Michael de la Pole, Lord Chancellor, the 10th year of Richard the IId. when he required the ſame—The precedent referred to, by the Committee, is as follows, "Le dit Conte de "Suffolk avoit ordeigne, que Monſieur Ri- "chard le Scrop, ſon Frere en Loi, averoit les "Paroles de ſa reponſe des ditz Empeche- "mentz: a quelle choſe les Seigneurs diſoi- "ent, que feuſt honeſt pur lui de reſpondre "par ſa Bouche demeſne."—Rot. Parl. Vol. III. p. 216. N° 7.

‡ When the Lords had gone through all the charges againſt Lord Middleſex, and had heard him in his defence, the opinion of the Houſe of Lords is taken on each ſeparate article of charge—on the 12th of May, 1624, "Whether upon that charge the Lord Trea- "ſurer be cenſurable or no?" Upon ſome he is acquitted.—They then proceed to conſider, What puniſhment ſhall be inflicted upon him, on account of thoſe miſdemeanors which have been proved againſt him—and reſolve upon ſeveral—fine, impriſonment, and diſqualification from holding offices or ſitting in Parliament.

anſwers

anſwers to each particular charge *.—On the 9th of June, a meſſage is ſent to the Lords, to require a copy of the Duke's anſwer, that the Houſe may make a reply to it with as much ſpeed as poſſible.—The anſwer is ſent to the Commons on the 10th †.—And on

* See theſe anſwers, with the Duke's introductory ſpeech at length, in the Lords Journals.

† In the famous remonſtrance, which was prepared at this time by the Commons, and was intended to have been preſented to the King (but from doing which they were prevented by the diſſolution of the Parliament, on the 15th of June) theſe charges againſt the Duke of Buckingham were recapitulated; and the Commons deſire, that, for theſe and other reaſons there alleged, "the King would be "graciouſly pleaſed to remove this perſon "from acceſs to his ſacred preſence."—The King was ſo offended with this remonſtrance, that he publiſhed a proclamation, "commanding all perſons, of whatſoever quality, "upon pain of his indignation and high diſ"pleaſure, who have, or ſhall have hereafter, "any copies or notes of the ſaid remonſtrance, "or ſhall come to the view thereof, forthwith "to burn the ſame; that the memory thereof "may be utterly aboliſhed, and never give "occaſion to his Majeſty to renew the remem"brance of that, which, out of his grace and "goodneſs, he would gladly forget."—See this remonſtrance, together with the King's declaration, in which were contained his reaſons for diſſolving the Parliament, in the Parliamentary Hiſtory, Vol. VII. p. 300 to 320. —See alſo, in Lord Clarendon's Hiſtory of the Rebellion, Vol. I. p. 6, et ſubſ. his obſervations upon the diſſolution of this and the next Parliament, and the fatal conſequences of thoſe meaſures; all which he attributes to the imprudent counſels of the Duke of Buckingham and the Lord Weſton.—"I wonder "leſs at the errors of this nature in the Duke "of Buckingham; but that the other, the "Lord Weſton, who had been very much "and very popularly converſant in thoſe Conventions; who exactly knew the frame and "conſtitution of the kingdom, the temper of "the people, the extents of the courts of "law, and the juriſdiction of Parliaments, "which, at that time, had ſeldom or never "committed any exceſs of juriſdiction, (mo"deſty and moderation in words never was "nor ever will be obſerved in popular coun"cils, whoſe foundation is liberty of ſpeech) "that he ſhould believe, that the union, "peace, and plenty, of the kingdom, could "be preſerved without Parliaments, or that "the paſſion and diſtemper, gotten and re"ceived into Parliaments, could be removed "and reformed by the more paſſionate break"ing and diſſolving them; or that that courſe "would not inevitably prove the moſt perni"cious to himſelf, is as much my wonder, as "any thing that has ſince happened."—The truth of this obſervation of Lord Clarendon's was confirmed by what followed immediately after.—The Commons, in the very next Parliament, on the 11th of June, 1628, in another remonſtrance, repeat their complaints againſt the Duke of Buckingham, declaring, "The "principal cauſe of all theſe evils and dan"gers, we conceive to be the exceſſive power "of the Duke of Buckingham, and the abuſe "of that power."—See this remonſtrance in the Parliamentary Hiſtory, Vol. VIII. p. 219. —Soon after this, on the 23d of Auguſt, 1628, the Duke was ſtabbed by Felton at Portſmouth; and one of the reaſons given by Felton, before the Privy Council, for his committing this act, was, the words in this remonſtrance.—Ruſhworth's Collections, Vol. I. p. 638.

the

the 15th of June, the Parliament is diſſolved by a Commiſſion read in the Houſe of Lords.

5. On the 11th of June, 1628, Dr. Mainwaring having been taken into cuſtody, upon the charge of the Commons, for having publiſhed, in his Sermons *, tenets derogatory to the rights and liberties of the ſubject; and the Lords having examined witneſſes to prove his preaching and publiſhing theſe ſermons; he is brought to the Lords Bar, and the charge is opened by the Prime Serjeant and Attorney General; and, being aſked, by the Lord Keeper, Whether he doth acknowledge theſe tenets? he abſolutely denies them; but, upon evidence being produced, he deſires to have a copy of the charge in writing, and Counſel allowed him, and further time to make his defence.—On the 13th of June, he is heard at the Bar in his defence; and, being withdrawn, the Lords are of opinion that he be cenſured for his crime; and agree upon his ſentence: Judgment is demanded by the Commons, and is pronounced againſt him on the 14th.

6. See the proceedings upon Lord Strafford's trial, at length in Ruſhworth's Collections, Vol. VIII. p. 102, and in the State Trials, Vol. I. p. 715 †.

7. On the 24th of March, 1640, the Lords make an order, "That if any Peer, having any ſcruple or doubt in him, ariſing

* See theſe tenets, and the part which the King, and Biſhop Laud, had in the publication of theſe books, explained in the note ‡, p. 125, of this Vol.

† The Managers appointed to conduct the impeachment againſt the Earl of Strafford were, Lord Digby, Mr. Hampden, Mr. Pym, Balſtrode Whitlocke, Oliver St. John, Sir Walter Earle, Geoffry Palmer, John Maynard, and John Glyn, Recorder of London.—"Lord "Strafford, (ſpeaking of the Committee who "managed the evidence againſt him, and "particularly of the lawyers) ſaid to a private "friend, that *Glyn* and *Maynard* uſed him "like advocates, but *Palmer* and *Whitlocke* "uſed him like gentlemen, and yet left out "nothing material to be urged againſt him."
*Whitlocke's Memoirs, p.* 41.



"out

" out of the evidence at the trial of the Earl of Strafford, ſhall " ſtand up and perſiſt to deſire to have the Houſe adjourned, where- " by he may be ſatisfied in his conſcience of the ſaid doubt, the " Houſe is to be adjourned, without giving a reaſon in Weſtminſter- " Hall; but the Peer is to be anſwerable to this Houſe for the " reaſon of it *."

8. " The Managers for the Houſe of Commons proceeded againſt the Earl of Strafford article by article, till they came to the 20th article; but then, finding the following articles ſo nearly related to one another, they would tie themſelves no more to theſe rules, but pleaded for liberty to handle them, not as they lay, but as they were related to one another; and after Lord Strafford had long and vigorouſly oppoſed this, " the Lord High Steward determined the " caſe, and ordered" that they ſhould be handled promiſcuouſly, and in cumulo, as the Managers for the Commons ſhould think fit †."

* The practice has been conformable to this order ever ſince, That, at the requeſt of any Lord, the court, without a queſtion, adjourns back to the Houſe of Lords.

† This is Ruſhworth's account, in Vol. VIII. p. 514 of his Collections.—I do not find any thing mentioned in the Lords Journals, of any objection made by Lord Strafford; nor had the Lord High Steward authority to determine any thing without the direction of the court; the proceeding however on the 5th of April was, (as ſtated by Ruſhworth) on the 20th, 21ſt, 22d, 23d, and 24th articles taken together. In the hiſtory of theſe proceedings in the 1ſt volume of the State Trials, p. 726, the following account is given of this matter: " On Monday Maſter Whitlocke proceeded to the 20th article, and told him, that, becauſe the matter was intervenient, et conſimilis naturæ, they had reſolved to join the five next articles together, becauſe all of them tended to one point or period." The Lieutenant intreated, that they would proceed according to the orders preſcribed by the Houſe, which was, article by article: he ſaid, " five " articles were many, the matter weighty, his " memory treacherous, his judgment weak." It was bitterly replied by Maſter Glyn, " That " it does not become the priſoner at the Bar " to preſcribe to them in what way they ſhould " give in their evidence." The Lieutenant modeſtly anſwered " That if he ſtood in his " place, he would perhaps crave the like " favour; unleſs his abilities did furniſh him " with more ſtrength than he could find in " himſelf; for his part he was contented, " they ſhould proceed any way, always pro- " vided, they would grant him a competent " time for replying." And ſo Whitlocke went on.

9. On

9. On the 26th of January, 1666, the Managers of the impeachment againſt the Lord Viſcount Mordaunt, for high crimes and miſdemeanors, obſerving, at the trial in the Houſe of Lords, that, after the articles were read, his Lordſhip did ſit in the Houſe as a Judge, and had Counſel at the Bar to make his defence, objected to both theſe circumſtances, "as contrary to former precedents, parti-"cularly that of the Earl of Middleſex *, the 21ſt of Jac. Iſt, and "that of Michael de la Pole, in Richard the IId's time, who "anſwered for himſelf."—The Lords, upon theſe objections, order a Committee to ſearch for precedents upon both points.—On the 28th of January, the Committee make their report; upon which the Lords direct, "That the lower Baron's bench ſhould be re-"moved, and a ſtool ſet near the Bar, where the Lord Mordaunt is "to ſit uncovered, as a Peer, but not in the capacity of a Judge; and "that he ſhall be allowed Counſel."—This order † is communicated to the Managers of the Commons, at the Bar of the Houſe of Lords —who deſire leave to acquaint the Houſe of Commons with theſe reſolutions, "becauſe they receive their inſtructions in this buſineſs "from the Houſe of Commons ‡."—The Houſe of Commons acquieſce in allowing Counſel to Lord Mordaunt, but not in the manner of his ſitting within the Bar; and, on the 31ſt of January,

* See this caſe of the Earl of Middleſex, before, p. 204.—The Commons had, on the 26th of January, before the Managers went up to the Lords, ordered, that they ſhould proceed there in this buſineſs of Lord Mordaunt, according to this precedent of the Lord Cranfield.

† See a ſimilar order made on the 1ſt of May, 1725, in the inſtance of the Earl of Macclesfield.

‡ The Commons, upon this report, on the 28th of January, appoint a Committee to conſider of the precedents cited by the Lords; who report, on the 29th, the order, relating to matters of judicature, which the Lords had made on the 28th of May, 1624, and which is entered before in this volume, p. 158; they alſo report the caſe of the Earl of Briſtol, as cited before, p. 100, and in the note p. 101.—After reading this report, the Commons refuſe to acquieſce in the point of the manner of Lord Mordaunt's being within the Bar; but, upon a diviſion, they do acquieſce with the Lords, in allowing Counſel to be aſſigned him upon his trial.

order

order * the Managers to acquaint the Lords with theſe their reſolutions †.—This is communicated to the Lords at their Bar by the Managers, on the 31ſt of January; when the Lords immediately reſolve, "That, judging it a right inherent in every court, to order and "direct ſuch circumſtances and matter of form, that can have no "influence to the prejudice of juſtice, in ſuch way as they ſhall "judge fit, where the ſame are not ſettled otherwiſe by any poſitive "rule, their Lordſhips do confirm the order, already made in this "caſe, as juſt and equal, and do wiſh the Commons to proceed to "matter of ſubſtance."—The Managers are called in, and acquainted with this reſolution of the Lords; who deſired leave again to reſort to their Houſe for their directions ‡. —The Commons diſagree to this determination of the Lords, and demand a Conference to aſſign their reaſons;—this Conference is agreed to by the Lords, and held on the 4th of February §.—The Lords adhere to their former reſolutions of the 28th and 31ſt of January; which, being

* It had been propoſed, on the 29th of January, to acquaint the Lords with this determination of the Commons at a Conference, but this was negatived on a diviſion.

† The Commons reſolve, on the 31ſt of January, "That this Houſe do ſit whilſt the "Committee of Managers is with the Lords, "upon the buſineſs of the Lord Mordaunt's "trial."—Accordingly, much buſineſs appears, from the Journals, to have been done, in the abſence of the Managers.—The general practice, however, has been different: and it ſeems more proper, that, whilſt ſo great a number of Members are, by the commands of the Houſe, performing their duty in another place, and therefore neceſſarily abſent, the Houſe ſhould not permit any buſineſs to proceed.—The cuſtom therefore has been, as well upon Conferences as on Impeachments, that the Speaker leaves the chair as ſoon as the names of the Managers are called over, and they are withdrawn out of the Houſe; and does not reſume the chair, till the Managers, or the Members appointed to manage the Conference, are returned into the Houſe.

‡ The Commons upon this report from their Managers, on the 31ſt of January, deſire a Conference with the Lords, "upon the mat-"ter of the Lord Mordaunt's ſitting within "the Bar, at the time of his trial, with his hat "off;" and they alſo appoint a Committee to ſearch precedents and prepare reaſons to be offered at the Conference.—On the 1ſt of February, Mr. Seymour reports from the Committee two reaſons; theſe are not entered in the Journal of the Commons, but are in the Lords Journal of the 4th of February.

§ It appears from the Lords Journal of the 4th of February, that objections were made to the agreeing to this Conference upon the ground, as is expreſſed in the proteſt, "That "the conferring with the Houſe of Commons, "upon a matter only relating to the manner "of proceeding in judicature, is a great dero-"gation to the privilege of the Lords."

reported to the Commons at a Conference, they on the 5th of February, demand a Free Conference; which, after long debate, the Lords refuſe; and acquaint the Commons, that their Lordſhips adhere to their former order, and are ready to proceed.—The Commons, on the 6th of February, demand a Conference upon this meſſage of refuſal of a Free Conference; which the Lords agree to, and it is held on the 7th of February.—Upon the report of which, the Lords demand a Free Conference, on the ſubject of this laſt Conference; in which the Lords juſtify their proceeding in refuſing the Free Conference demanded by the Commons.—The Commons demand another Free Conference *, on this Conference: but the whole of this diſpute is put an end to by the King's coming, on the 8th of February, and proroguing the Parliament †.

10. On the 17th of May, 1679, the Lords direct the Committee of Privileges to ſearch for and conſider precedents and ways of proceeding on the trials and judicature of Peers; and to adviſe of directions and methods fit to be obſerved therein, for the preſervation of order and regularity, on the trials of the Lords now appointed; and all circumſtances uſually occurring on ſuch trials.—On the 22d of May, the report of this Committee is made ‡, and agreed to, and ordered

* Much learning, touching the law of Parliament, in queſtions of granting or refuſing Conferences, particularly in matters of judicature, appearing in this diſpute between the two Houſes—conducted, as appears, on the part of the Lords, by the Lord Angleſey, and on that of the Commons, by Mr. Seymour, afterwards Sir Edward Seymour, both men well verſed in theſe ſubjects—the proceedings are extracted from the Lords Journals, where they are entered more at length, and inſerted in the Appendix to this Volume, N° 9.

† Lord Danby, in arguing his own caſe in the Court of King's Bench, on the 27th of May, 1682, mentioning this impeachment of Lord Mordaunt, ſays, "He was impeached "upon articles in one ſeſſion; but having "taken out a pardon during the prorogation, "was never more called upon, nor never "queſtioned on the former impeachment, "although the very ſame Parliament ſat again, "which had impeached him."

*St. Trials, Vol.* II. *p.* 744.

The ſame circumſtance is mentioned in the Pamphlet referred to before p. 192, intitled "A Treatiſe of the King's power of granting "pardons in caſes of Impeachment," p. 10.

‡ See this report at length in the Lords Journal of the 22d of May, and in the Journal of

ordered to be communicated to the Committee of the Houſe of Commons, at the next meeting of the Joint-Committee of both Houſes.

11. On the 30th of November, 1680, the trial of Lord Stafford commences in Weſtminſter Hall *. —The Speaker leaves the chair, and the Committee of Managers go;—when they return, the Speaker reſumes the chair.

12. On the 2d of December, 1680, the Lords order, That all the Lords do attend this Houſe, during the trial of Lord Stafford, upon the peril of undergoing the cenſure of this Houſe for their abſence.

13. On the 4th of December, 1680, Lord Stafford deſired that his Counſel might be heard to the following points of law: (1.) Whether proceedings ought to be continued from Parliament to Parliament upon impeachments? (2.) Whether an impeachment be to be proſecuted in Parliament, without an indictment found by a Grand Jury †?—The Lords, after

of the Houſe of Commons of the 23d of May. The Lords reſolve, "That the Commons be "acquainted, that this paper contains the or- "ders of the Houſe of Lords *de bene eſſe*, pre- "paratory to the trials; yet ſuch, that if the "Commons have any thing to object to, or to "offer to be added to them, the Lords will "conſider thereof, and do what ſhall be "reaſonable." It appears from the report, on the 23d of May, in the Houſe of Lords, of what paſſed on the communication of this paper, that the Committee of the Commons ſaid, "That they would receive this paper as "propoſitions, but that they did not intend to "give any anſwer to it, till they ſhould have "an anſwer from the Lords to the former "propoſition of the Commons, concerning "the right of the Lords Spiritual to ſit on "theſe trials."—A ſimilar Committee was appointed on the 23d of November, 1680, which report, on the 26th, rules and directions to be obſerved on the trial of Lord Stafford.

* See the proceeding at length on this trial, in the State Trials, Vol. III. p. 101, with the ſpeeches of the Managers, &c.—The Commons, on the 2d of December, make an order, That nothing that ſhall be ſaid by any Member of this Houſe, or by any witneſs brought to ſupport the proſecution, be printed or publiſhed, without leave of the Houſe.

† There were two other queſtions of law, touching the manner of alleging the overt-act, and

ter conſideration, refuſe to hear Lord Stafford's Counſel to theſe points *.

14. On the 6th of December, 1680, the evidence and arguments being cloſed, it was ſuppoſed the Lords would have proceeded that day to give judgment;—but, upon a queſtion put, Whether to adjourn that night to Weſtminſter Hall? the votes were equal, and ſo it was carried in the negative.—The Lords, taking notice that ſome Lords were abſent this day, who were preſent all the days of the trial and heard the evidence, order, That particular notice be given preſently to the abſent Lords, to give their attendance on this Houſe immediately, or elſe they are to be ſent to the Tower †.—On the 7th, the Lords are called over by a ‡ liſt, to know who are abſent, that were preſent at the hearing of all the evidence; and all the Lords in the liſt were preſent, excepting the Earl of Dorſet and the Lord Coventry who had been excuſed §.

and the evidence. Upon theſe, the Lords took the opinion of the Judges, which the Judges delivered *publicly in Weſtminſter Hall*, on the 4th of December, in the preſence of Lord Stafford.

* See the ſpeeches of Sir William Jones, and Sir Francis Winnington, upon theſe points;—Sir Francis Winnington ſays, "This is the "cauſe of the Commons of England, who "only change their repreſentatives in a new "Parliament."

† Lord Dorſet, and Lord Coventry, were excuſed upon oath made at the Bar by their phyſicians, that from illneſs they could not attend.

‡ In the liſt of the Lords preſent at this time, and during the trial, the name of the Duke of Cumberland (who was Prince Rupert, ſon of the Queen of Bohemia, and grandſon of James the Iſt,) had precedence to that of the Lord High Steward: and it appears from the State Trials, Vol. III. p. 102, that in the proceſſion, on the firſt day of the trial, from the Houſe of Lords to Weſtminſter Hall, Prince Rupert (ſtated to be *a Prince of the Blood*) walked after the Lord High Steward; and from p. 212, that, in taking the votes of Guilty or Not guilty, the Duke of Cumberland gave his vote after the Lord High Steward.

§ See in the Lords Journal of the 7th of December, the proceedings of the Lords, before they gave judgment.—The Lord High Steward, being infirm, has leave to ſit, whilſt he takes the votes of Guilty or Not guilty.—Lord Stafford pleads in arreſt of judgment, but his plea is over-ruled.

## VI. *Commons demand Judgment.*

1. ON the 26th of March, 1621—the Lords are ready to give judgment againſt Sir Giles Mompeſſon, "if the "Commons, with their Speaker, will, according to the antient "cuſtom of Parliament," come and demand it *.—The Speaker, with all the Houſe, went up and demanded judgment accordingly.

2. On the 3d of May, 1621, the Lords are ready to give ſentence againſt the late Lord Chancellor Bacon, if this Houſe, by their Speaker, will come up and demand judgment †.—So, on the 4th of May.

* See the debate upon this queſtion, in the Commons Journal.—And, in the Lords Journal of the 26th of March, ſee the form of the proceeding at full length; and the Judgment itſelf; to which, though very ſevere, King James (as appears from the Lords Journal of the 27th of March) was pleaſed to add, "that "of perpetual baniſhment out of all his Ma- "jeſty's dominions."—This abſurd and illegal proclamation for baniſhing Sir Giles Mompeſſon, is to be found in Rymer's Fœdera, Vol. XVII. p. 289.—Illegal it was, becauſe the King had, by law, no authority to iſſue or enforce it.—Abſurd, becauſe, after reciting the puniſhment adjudged to be inflicted upon him by the Lords, part of which was impriſonment during life, it charges Sir Giles Mompeſſon, if within the King's dominions (for he at this time was abſconding and concealed) forthwith to depart, and never to return; thereby exhorting him to evade the execution of that part of the ſentence.

† See the form of demanding, and the Judgment itſelf, in the Lords Journals.—Beſides fine and impriſonment, "Lord Bacon was "rendered incapable of any office, or place, "or employment in the State or Common- "wealth; never to ſit in Parliament, or come "within the verge of the Court."—It is ſaid, in the Life prefixed to his Works, that, about three years after, King James granted a full and entire pardon of his whole ſentence; and that Lord Verulam was ſummoned to the firſt Parliament of King Charles.—That Parliament met on the 18th of June, 1625, and Lord Bacon died on the 9th of April, 1626.—But I apprehend this laſt anecdote, of his being again ſummoned to Parliament, not to be true; becauſe, when the Lords were called over, on the 23d of June, and again on the 15th of February, 1625, it appears from the Lords Journal, that the name of Lord Viſcount St. Albans was neither amongſt thoſe preſent nor abſent.—See, in Vol. V. of Parliamentary Hiſtory, p. 421, Lord Bacon's Letter to the King, ſoliciting his pardon; and the King's Warrant to the Attorney General to make it out; and Lord Keeper Williams's reaſons for demurring to put the ſeal to it.—The following account, at the concluſion of the proceedings,

May, 1621, againſt Sir Francis Michell—and, on the 13th of May, 1624, againſt the Lord Treaſurer Middleſex *.

ings againſt him, in the 1ſt vol. of the State Trials, is, if true, very extraordinary:—"Though Lord Bacon was afterwards ſet at "liberty, and had a penſion from the King, "he was in great want to the very laſt, living "obſcurely in his chambers at Gray's Inn; "where his lonely and deſolate condition ſo "wrought upon his melancholy temper, that "he pined away; and, after all his height of "abundance, was reduced to ſo low an ebb, "as to be denied beer to quench his thirſt; "for, having a fickly ſtomach, and not liking "the beer of the houſe, he ſent now and then "to Sir Fulk Greville, Lord Brook, who "lived in the neighbourhood, for a bottle of "his beer; and, after ſome grumbling, the "Butler had orders to deny him." Mallet, in his Life of Lord Bacon, prefixed to the folio edition of his Works, does not confirm this account.

* One part of the Judgment againſt Lord Middleſex, was, "That he ſhall never ſit in Parliament any more;" as had before been pronounced againſt Lord Bacon.—Lord Clarendon ſays, "A clauſe of ſuch a nature, as "was never before found in any Judgment "of Parliament; and, in truth, not to be in-"flicted upon any Peer, but by attainder." Hiſtory of the Rebellion, Vol. I. p. 20.—It ſhould ſeem, as if there had been ſomething particular in this Judgment, or in the manner of delivering it; becauſe the next day, the 14th of May, a Committee is appointed, by the Commons, to ſearch former precedents, how Judgments have been given in former times by the Lords, upon complaint made by the Commons.—It does not appear that this Committee made any report.—There is a very curious anecdote, upon the ſubject of the Lord Treaſurer's condemnation, told in Ambroſe Philips's Life of Archbiſhop Williams, p. 105. "His Majeſty, King James the Iſt, ſent for "the Lord Keeper Williams, and told him "plainly, 'That he would not have his Trea-"ſurer a public ſacrifice.'—'Sir,' ſays the "Lord Keeper, 'I have attempted amongſt "my ſureſt friends, to bring him off fairly; "All ſhrink and refuſe me.—Only the ſtout "and prudent Lord Holles adventured upon "the frowns of the Prince and Duke, and "gave his reaſons, Why Middleſex appeared "to be innocent.—I were mad, if, for my "part, I ſhould not wiſh him to eſcape this "tempeſt, and be ſafe under the harbour of "your Majeſty's clemency—When I delibe-"rate upon him, I think of myſelf—'*Tis his* "*fortune to-day, 'tis mine to-morrow.*—The "arrow that hits him, is within an handful of "me. Yet, Sir, I muſt deal faithfully—Your "Son, the Prince, is the main champion that "encounters the Treaſurer; whom, if you "ſave, you foil your Son—For, though mat-"ters are carried by the whole vote of Par-"liament, and are driven on by the Duke, "yet they that walk in Weſtminſter Hall, call "this, "The Prince's undertaking;" whom "you will blaſt in his bud, in the opinion of "all your ſubjects, if you ſuffer not your old, "and, perhaps, innocent ſervant, to be pluck-"ed from the ſanctuary of your mercy—Ne-"ceſſity muſt excuſe you from inconſtancy "or cruelty.' So, with theſe reaſons, the "King was perſuaded to yield to the head-"ſtrong importunities of his Parliament, "and the Treaſurer was depoſed, and fined "£. 1000, and committed to the Tower."—Within a few months after this converſation, the Lord Keeper's prophecy was fulfilled; for, by the influence of the ſame Duke of Buckingham, he himſelf was removed from the office of Lord Keeper, and retired from Court to his palace at Bugden, in diſgrace. He was at that time only Biſhop of Lincoln.

3. On the 14th of June, 1628, a meſſage is ſent to the Commons, That the Lords are ready to proceed to judgment againſt Dr. Mainwaring, if they, with their Speaker, will come to demand the ſame. —The Commons return for anſwer, That they will come preſently *.

4. On the 13th of May, 1679, the Lord Preſident reports from the Joint-Committee of both Houſes which had been appointed to conſider of propoſitions and circumſtances relating to the trial of the Lords in the Tower—That, upon the Lords aſſerting that Judgment of theſe matters belong entirely to them, the Commons had acknowledged, "That Judgment after trial is in the Lords; but "their Lordſhips are not to give Judgment unleſs the Commons "demand it †."

5. On the 6th of December, 1680, the Lords ſend a meſſage to the Commons, That they have appointed Lord Stafford to be brought to the Bar, in Weſtminſter Hall, to-morrow morning, to hear Judgment.—The Commons immediately reſolve, *nemine contradicente*, That this Houſe will go, to-morrow morning, with their Speaker, to the Bar of the Houſe of Lords, and demand Judgment ‡ upon the impeachment of the Commons of England againſt Lord Stafford.—

On

* The form of demanding this Judgment is as follows:

"My Lords,

"The Knights, Citizens, and Burgeſſes, of "the Commons Houſe of Parliament, have "impeached before your Lordſhips Roger "Mainwaring, Clerk, Doctor in Divinity, of "divers enormous crimes; for which your "Lordſhips have convented him before you, "and examined the ſaid offences.—And now "the Commons have commanded me, their "Speaker, to demand Judgment againſt him "for the ſame."—See, in the Journals of the Lords and Commons, of the 21ſt of June, the form of executing that part of the ſentence, which required his ſubmiſſion, and acknowledgment of his offences, at the Bar of both Houſes.

† See, in p. 192 of this Volume, the manner and form of the Commons demanding Judgment againſt the Earl of Danby, upon the Commons diſallowing the validity of Lord Danby's plea of pardon in bar of the impeachment.

‡ On the 7th of December, before the Speaker leaves the Chair, the Commons reſolve, "That the Committee appointed to "manage the impeachment againſt Lord "Stafford

On the 7th of December, the Speaker went up with the Mace, and demanded Judgment *.

6. On the 25th of March, 1681, the Commons ſend a meſſage to the Lords, to mind their Lordſhips, "That the Commons had "formerly demanded Judgment by their Speaker, at the Bar of the "Lords Houſe, upon their impeachment againſt Lord Danby †; "and therefore to deſire their Lordſhips to appoint a day to give "Judgment upon that impeachment."

"Stafford be impowered, in caſe the Houſe "of Lords ſhall proceed, immediately after "the fact found, to give Judgment, to inſiſt "upon it, that it is not Parliamentary for "their Lordſhips to give Judgment, until the "ſame be firſt demanded by this Houſe."—See the debate which preceded this reſolution in Grey's Debates, Vol. VIII. p. 109. The queſtion diſcuſſed was, Whether the Commons could properly demand Judgment until the Lords had determined the fact, Guilty or Not guilty.—It is ſaid in the 8th volume of Grey's Debates, p. 114, "That the Committee of Com-"mons were preſent at the court in Weſtmin-"ſter Hall, when the Lords found Lord Staf-"ford guilty of the High Treaſon whereof he "ſtood impeached; and then the whole Houſe "went up with the Speaker, to demand Judg-"ment." The ſeveral proceedings of this day the 7th of December, viz. (1.) The form of the Lords finding the verdict Guilty or Not guilty; (2.) What Lord Stafford urges in arreſt of Judgment.—(3.) The form of the Commons demanding judgment—and (4.) The judgment pronounced by the Lord High Steward, are to be found in the State Trials, Vol. III. p. 211. et ſubſ.

* When Judgment was actually pronounced, on the 7th of December, the Committee of Managers of the impeachment were preſent in the court of Weſtminſter Hall.—On the 4th of June, 1685, after the acceſſion of James the IId, a Bill paſſed the Lords, for reverſing the Attainder of Lord Stafford, which, however, never paſſed the Houſe of Commons; probably for the reaſons, which are very well expreſſed in a proteſt, ſigned by Lord Angleſey, on the 3d of June—againſt the Bill being ingroſſed.

† On the 24th of March, 1680, on the meeting of the new Parliament at Oxford, Lord Danby, who had been committed by the Lords, on the 16th of April, 1679, upon the impeachment againſt him by the Commons in the former Parliament, petitions to be bailed.—The debate upon the prayer of this petition is put off till the 28th, when the Parliament is diſſolved.—This Parliament ſat but for a week, from Monday the 21ſt to Monday the 28th of March.—See Biſhop Burnet's account of the manner in which the King diſſolved this Parliament (Hiſtory, Vol. I. p. 499). Afterwards, in the year 1684, Lord Danby and the Popiſh Lords were bailed by Jefferyes, then Chief Juſtice of the Court of King's Bench.—Burnet ſays, "It was cer-"tainly a great hardſhip Lord Danby lay "under: for he had been now five years in "the Tower—Three Parliaments had ſat; the "two laſt had not mentioned him; and now a "Parliament ſeemed out of ſight—Yet though "he offered a very long and learned argu-"ment for their bailing him, the Judges of "the King's Bench, even Saunders himſelf, "were afraid to meddle in it.—But Jefferyes "was bolder—So he bailed him."—Hiſtory, Vol. I. p. 591.—See theſe arguments of Lord Danby at large, in the State Trials, Vol. II. p. 739—and 750—with what was ſaid by the Court on that occaſion.

VII. *Bills*

## VII. *Bills of Attainder.*

1. ON the 1ſt of February, 1605, a Bill was brought in at the Lords, for the Attainder of divers offenders in the late moſt deteſtable and damnable treaſons.—This Bill was read 2° on the 3d of February, and committed, with directions to the Attorney General to prepare the evidence againſt the parties attainted.—On the 25th of March, 1606, this Bill was laid aſide, and a new Bill was preſented, read 2° on the 26th, with the like directions to the Attorney General.—On the 1ſt of April, the Bill was ordered to be ingroſſed; and was read 3° on the 3d of April, and ſent to the Commons by the Chief Baron, attended by ſix meſſengers, Judges and others, and ſpecially recommended, for the weight, for expedition.—It appears, from the Commons Journal, that notwithſtanding this recommendation, and the atrociouſneſs of the offence charged, there was a debate, even upon the firſt reading of the Bill, on the 4th of April. It was not read 2° till the 10th; when, after debate in what manner and by whom the evidence ſhould be produced, it was ordered that it ſhould be by Mr. Attorney, at the Bar, and not by Mr. Solicitor and Sir Francis Bacon, they being Members of the Houſe.—On the 29th of April, the Attorney General produces the evidence.—On the 30th Counſel are heard for ſome of the parties attainted, and the Bill is committed.—On the 8th of May, the Bill is reported, with amendments; but before the amendments are agreed to, the Commons deſire a Conference with the Lords about them.—This is agreed to by the Lords, but it does not appear, from the Journal of either Houſe, what paſſed there.—The Bill, with the amend-

ments and proviſo, paſſed the Commons on the 12th of May, and were agreed to by the Lords on the 13th *.

2. On the 10th of April, 1641, the Bill of Attainder of the Earl of Strafford for high treaſon is read 1° in the Houſe of Commons †.—On the 14th, it is read 2°, and committed for the ſame day, poſt meridiem, when the Committee ſat, and alſo on the 15th, and ſubſequent days ‡.—The Bill was reported on the 21ſt of April

* See this act in the Statutes at Large, 3d Jac. Iſt, ch. 2.—The trials of the ſeveral perſons concerned in this (commonly called, The Gunpowder Treaſon) plot, before Commiſſioners appointed for that purpoſe, are in the State Trials, Vol. I. p. 224, et ſubſ.

† See what is ſaid before in note †, p. 165. upon the ſubject of the intention of the enemies of the Earl of Strafford having been, from the commencement of the proſecution againſt him, to proceed by Bill.—Both houſes having been preſent in Weſtminſter Hall whilſt the evidence was given upon the trial by impeachment, made it, in their opinion, unneceſſary to hear the evidence again in either Houſe.—In the Journal of the Commons of the 10th of April, and in Lord Clarendon's Hiſtory of the Rebellion, Vol. I. p. 179, there is a very curious account of the production, in the Houſe of Commons, by Sir H. Vane the younger, of the copy of his father's Minutes of Council, with reſpect to bringing over the army from Ireland—upon which minutes the Bill was immediately ordered in.—Theſe minutes, as appears from Whitlocke's Memoirs, p. 41, were read, upon the 13th of April, in Weſtminſter Hall, in the preſence of Lord Strafford, and of both Houſes.—See theſe papers at length in Whitlocke, with Lord Strafford's anſwers to them.—All proceedings relating to this Bill of Attainder are reverſed, and ordered to be eraſed from the Journal of the Houſe of Lords, by the directions of an Act, paſſed in the 13th and 14th of Charles II. ch. 29th.—On the 4th of July, 1698, the Lords appoint a Committee to inſpect their Journals in the year 1640 and 1641, relating to the vacating and obliterating divers proceedings therein, purſuant to the Act of the 14th Charles II. "For reverſing the Earl of "Strafford's Attainder," and the ſeveral Orders of the Houſe purſuant thereto.—This Committee reports on the 5th of July, "That, "upon the peruſal of the Journals, it plainly "appears, that, by the former Orders made "by this Houſe, relating to the cancelling and "obliterating the proceedings againſt the "Earl of Strafford, it could not be intended, "that any other proceedings ſhould be obli-"terated, than thoſe relating ſpecially to the "Act of Attainder.—It is therefore ordered "and declared by the Lords, That whatſo-"ever ſtands croſſed upon the Journals, re-"lating to the proceedings on the impeach-"ment of the ſaid Earl, ought not, nor ſhall, "be looked on as obliterated—and that the "ſeveral Orders, for obliterating and vacat-"ing any proceedings concerning the Earl "of Strafford, muſt be taken to have been "intended as to what related to the Act of "Attainder only." Which report being read, was agreed to by the Houſe.

‡ Whilſt this Bill was in its progreſs, the Commons, upon the 16th of April, reſolve, "That it is ſufficiently proved, that Thomas "Earl of Strafford hath endeavoured to ſub-

"vert

April *, and paſſed the Houſe of Commons, on that day †, on a diviſion of 204 to 59 ‡.

3. On

" vert the ancient and fundamental laws of " theſe realms of England and Ireland, and " to introduce an arbitrary and tyrannical " government, againſt law." And on the 19th, " That the endeavour of Thomas Earl " of Strafford to ſubvert the ancient and fun- " damental laws of the realms of England " and Ireland, and to introduce an arbitrary " and tyrranical government, againſt law, in " both theſe kingdoms, is High Treaſon." Though in the life of Selden in the Biogr. Britan. it is ſaid, " That he joined with the " moſt violent in proſecuting the Earl of " Strafford and Archbiſhop Laud," yet from the account in the State Trials, it appears, that Mr. Selden oppoſed this reſolution in the Houſe of Commons; and his name is accordingly inſerted in the liſt of *Straffordians* which was poſted up in Old Palace Yard, on the 3d of May.

* On this day, the 21ſt of April, Lord Digby, who had been one of the Managers on the trial of the Impeachment, made a ſpeech againſt the Bill of Attainder, in which was the following paſſage, " Truly, Mr. Speaker, I am ſtill the ſame in my opinions and affections, towards the Earl of Strafford; as I confidently believe him the moſt dangerous miniſter, the moſt inſupportable to free ſubjects, that can be charactered. I believe his practices in themſelves have been as high, as tyrannical, as any ſubject ever ventured on; and the malignity of them are highly aggravated by thoſe rare abilities of his, whereof God hath given him the uſe, but the Devil the application—In a word, I believe him ſtill that grand apoſtate to the Commonwealth, who muſt not expect to be pardoned in this world, till he be diſpatched to the other.—And yet, let me tell you, Mr. Speaker, my hand muſt not be to that diſpatch; I proteſt, as my conſcience ſtands informed, I had rather it were off." *Ruſhworth's Coll. Vol.* VIII. p. 50.

† On the 23d of April, whilſt this Bill was pending in the Houſe of Lords, the King wrote the following letter:

" Strafford,

" The misfortune that is fallen upon you, " by the ſtrange miſtaking and conjuncture of " theſe times, being ſuch, that I muſt lay by " the thoughts of employing you hereafter in " my affairs; yet I cannot ſatisfy myſelf, in " honour or conſcience, without aſſuring you " now, in the midſt of your troubles, that, " *upon the word of a King, you ſhall not ſuffer* " *in life, honour, or fortune:* This is but " juſtice, and therefore a very mean reward " from a maſter, to ſo faithful and able a " ſervant as you have ſhewed yourſelf to be; " yet it is as much, as I conceive the preſent " times will permit: though none ſhall hinder " me from being,

" Your conſtant faithful friend,

" CHARLES R.

" Whitehall, April 23d, 1641."

See this letter in the Strafford State Papers, Vol. II. p. 416—with the Lord Strafford's letter to his Son, the day before his execution —and ſome notes of the Lord Primate Uſher, of what the King, on the 11th of May, wiſhed the Archbiſhop to ſay from his Majeſty.—In Carte's Hiſtory of England. Vol. IV. p. 350, is a particular account of what was urged to the King, by ſeveral Biſhops, particularly Archbiſhop Williams, to ſatisfy the King's conſcience, that he might give the royal aſſent to the Bill.—Lord Strafford was executed on the 12th of May.

‡ In the Act of Attainder (which as a private Act, is not printed in the Statutes at Large, but which is to be found in Ruſhworth's

Collections, Vol. VIII. p. 756) the offences charged againſt him are recited in the preamble; "All which offences," the Act ſays, "have been ſufficiently proved againſt the "ſaid Earl upon his impeachment."—There is a clauſe in this Act, which, as it has often been made the ſubject of diſcuſſion, and the ſource of much miſtake, it may be proper here to take notice of:—It is as follows, "Provided "that no Judge or Judges, Juſtice or Juſtices, "whatſoever, ſhall adjudge or interpret any "act or thing to be treaſon, nor hear or de"termine any treaſon, in any other manner "than he or they ſhould or ought to have "done before the making of this Act—and "as if this Act had never been had or made." —By thoſe, who wiſh to repreſent this proceeding againſt Lord Strafford, by Bill of Attainder, as illegal, this proviſo has been cited to prove, that the ſame Parliament, which paſſed the Bill, admitted that the proceeding was ſo arbitrary, that they thought it neceſſary to enact, "That it ſhould never be uſed as a precedent."—But I apprehend, that this is not the true conſtruction of this clauſe. —The intention of inſerting it was, to obviate a miſconſtruction of that clauſe of the ſtatute of 25th Edward III. ſtat. 5, ch, 2, which, after declaring what offences ſhall be deemed to conſtitute acts of High Treaſon, enacts, "And, "becauſe that many other like caſes of treaſon "may happen in time to come, which a man "cannot think nor declare at this preſent "time; it is accorded, That if any other "caſe, ſuppoſed treaſon, which is not above "ſpecified, doth happen before any Juſtices, "the Juſtices ſhall tarry, without any going "to judgment of the treaſon, till the cauſe be "ſhewed and declared before the King and "his Parliament, whether it ought to be "judged treaſon, or other felony."—The clauſe in this Act of Attainder, therefore, means only to declare, That though, in the judgment of Parliament, theſe offences charged againſt the Earl of Strafford were by them adjudged to amount to the crime of High Treaſon, yet that this judgment ſhould not authorize the Judges of the realm hereafter, to adjudge or interpret any ſimilar act to be High Treaſon; but that if ſuch a caſe ſhould occur, they ſhould, in obedience to the ſtatute 25th of Edward III. "tarry," and not form any judgment upon the authority of what had been done upon this occaſion.—There is a ſimilar clauſe in the Rolls of Parliament, in the 11th year of Richard II, which, after confirming and eſtabliſhing ſeveral accuſations and judgments that had been held, concludes, "Et comment q̃ diverſe pointz ſont declarez "pur treſon, en ceſt preſent Parlement, autres "q̃ ne furent declarez par eſtatut devant, que "null Juſtice ait poair de rendre juggement "d'autre cas de treſon, n'en autre manere, "qu'ils n'avoient devant le commencement "de ceſt preſent Parlement." Rot. Parl. Vol. III. p. 250, N° 38.—Sir M. Hale, therefore, in his Plac. Cor. Vol. I. Chap. 24, p. 269, ſpeaking of the Act of Lord Strafford's Attainder, very properly obſerves, "That "this clauſe ſeems a cautious, but a very "needleſs proviſo; becauſe this Bill of At"tainder was a particular judgment, that did "not egredi perſonam, and no general decla"rative law to ſerve the ſtatute of 25th of "Edward III."—That this is the true conſtruction of this clauſe is confirmed by what Serjeant Maynard ſays: "I myſelf drew this "proviſo; that the judgment upon Lord "Strafford ſhould not be drawn into example; "elſe," ſays he, "liberty had been given to "the Judges to have judged treaſon accumu"lative—and therefore this ſhould not be "drawn into example, but the Judges ſhould "hold to the ſtatute of 25th Edward III."— See alſo, the ſpeeches of Mr. Solicitor General Winnington, Mr. Finch, and Mr. Powle, in the ſame debate, and Sir Harbottle Grimſtone's conſtruction upon the clauſe of the 25th Edward III.—Grey's Debates, Vol. VI. p. 379—386.—The Act, 13 and 14 Charles II. Ch. 29, which reverſes the Earl of Strafford's attainder, alleges ſeveral grounds,— (1.) "That he was condemned upon accumulative treaſon, none of the pretended crimes being

3. On the 15th of May, 1660 *, it is reſolved, that John Bradſhaw, Oliver Cromwell, Henry Ireton, and Thomas Pride, all deceaſed, ſhall, by Act of Parliament, be attainted of treaſon, for the murther of the late King.—The Bill is preſented on the 7th of November †.—On the 9th of November, petitions are preſented from perſons intereſted in the eſtates of the offenders, and referred to the Committee on the Bill, with inſtructions to hear the parties, and examine the caſes—And the Committee is to examine ancient precedents of proceedings in caſes of Attainder.—On the 17th, the Chairman reports the evidence given againſt the reſpective perſons in the ſaid Bill.—The Bill is re-committed, and reported on the 4th of December ‡, and paſſed the Houſe of Commons on the

being treaſon apart—(2.) That he was judged guilty of conſtructive treaſon—(3.) That this Bill was violently forced through both Houſes, by mobs of armed and tumultuous perſons—(4.) That when the King ſigned the commiſſion for giving the Royal aſſent to the Bill, "he did it with exceeding great ſorrow, and "it was ever remembered by him with inexpreſſible grief of heart; and out of his Ma"jeſty's great piety, he did publicly expreſs "it, when his own ſacred life was taken away "by the moſt deteſtable traitors that ever "were." For all which cauſes, the Act of Attainder is repealed, revoked, and reverſed."—See in the 10th Vol of Grey's Debates, p. 206, a debate in the year 1691, in which Mr. Solicitor General Somers ſays, "The "power of impeachment ought to be, like "Goliah's ſword, kept in the Temple, and "ought not to be uſed but on great occaſions. "—The ſecurity of your conſtitution is loſt, "when you loſe this power.—The ſtat. of "25 Edward III. did foreſee, that men would "be above the law; and, I believe, did not "take away thoſe, that were treaſons at "the common law.—Seductio Regis can "be puniſhed no otherwiſe than in Parlia"ment."

* This proceeding was in the Convention Parliament, which met on the 25th of April—and aroſe out of a debate upon a Bill then pending, "for general pardon, indemnity, "and oblivion;" which Bill was in conſequence of Charles IId.'s declaration at Breda, "That he would grant a free and general "pardon, under the Great Seal, to all his "ſubjects, who, within 40 days, ſhould lay "hold upon this his grace and favour; ex"cepting only ſuch perſons, as ſhall hereafter "be excepted by Parliament."

† The Bill is read a firſt and ſecond time on the 7th of November, the day it is preſented, on the ſuggeſtion of Prynn, "becauſe "the traitors heretofore read their Act for "the trial of the King twice together."—Parliamentary Hiſtory, Vol. XXIII. p. 7.

‡ See, in the Parliamentary Hiſtory, Vol. XXIII, p. 37 and 42, the debate upon this report, with the ſeveral expedients propoſed for the relief of the creditors, and of the perſons in poſſeſſion of the eſtates of the perſons attainted.

7th

7th of December; on the 14th was agreed to by the Lords; and on the 29th of December received the Royal Aſſent *.

4. On the 26th of October, 1665, a Bill is read 1° in the Houſe of Commons for attainting Thomas Dolman, and others, of High Treaſon, if they do not come in and render themſelves by a day.—It paſſed—and received the Royal Aſſent on the 31ſt of October †.

* See this Act in the Statutes at Large, 12th of Charles II. ch. 30, with the names of all the perſons attainted; of whom, ſeveral were dead, others had been executed, others fled from juſtice; with the proviſions relative to their eſtates. Not content with attainting theſe perſons, the Commons, on the 4th of December, 1660, reſolve, "That the *carcaſes* "of Oliver Cromwell, Henry Ireton, John "Bradſhaw, and Thomas Pride, whether bu-"ried in Weſtminſter Abbey or elſewhere, be, "with all expedition, taken up and drawn "upon a hurdle to Tyburn, and there hanged "up in their coffins, for ſome time, and after "that buried under the gallows.—And that "the Serjeant at Arms attending this Houſe, "do take care that this Order be put into "effectual execution." The Lords concur with the Commons in this reſolution, with this addition, "And the Dean of Weſtminſter "is deſired to give directions to his officers "of the Abbey to be aſſiſtant in the execution "of this Order;" to which, on the 8th of December, the Commons agree.

† It does not appear from the Journal of the Houſe of Commons, what the treaſon was, that Dolman and his accomplices were accuſed of. There is no examination of witneſſes, or any information given to the Houſe on this ſubject; but the Bill was ordered in upon motion. I can find nothing relating to this matter in any hiſtory of thoſe times. But on referring to the Act itſelf (which is preſerved in the Parliament Office) the preamble ſtates, "Whereas it is notoriouſly known, that Tho-"mas Dolman and the others therein named, "contrary to the duty of their allegiance, "have moſt traiterouſly and wickedly adhered "and ſtill do adhere to his Majeſty's enemies "beyond ſeas, where they ſtill remain, and "commit divers treaſonable acts, without any "ſenſe of loyalty to his Majeſty, or of natural "affection to their native country: May it "pleaſe your Majeſty, that it may be enact-"ed, &c. &c." There is then a clauſe enacting, "That all and every perſon, who now "are or hereafter ſhall be beyond the ſeas, "and whom his Majeſty by any royal procla-"mation under the Great Seal to be iſſued, "during the continuance of this war with the "States of the United Provinces, ſhall name "and require to return into England and ſur-"render themſelves, and who ſhall not return "and render themſelves accordingly, ſhall "ſtand and be attainted of High Treaſon." There is another clauſe, "to attaint of High "Treaſon all and every of his Majeſty's ſub-"jects, who from and after the 1ſt day of Fe-"bruary, 1666, ſhall, during the continuance "of the war, ſerve the States of the United "Provinces either by land or ſea, as a ſoldier "or ſeaman."

5. On the 16th of November, 1678, the Lords order the Attorney General to prepare a Bill, requiring certain perſons * therein named to render themſelves to juſtice, and in default thereof, to attaint them of High treaſon.—This Bill paſſed the Houſe of Lords, and was read 1° in the Houſe of Commons on the 23d of November, and then dropped.

6. On the 25th of March, 1679 †, the Commons, having ſome time before impeached Lord Danby, and deſired that he be committed; and the Lords having ſent a meſſage to the Commons to acquaint them "That Lord Danby was not to be found," immediately ordered in a Bill "to ſummon Lord Danby to render himſelf to juſtice by a day certain, or in default thereof to attaint him."—This Bill paſſes the Commons on the 1ſt of April.—The Lords, on the 2d of April, reſolve to amend the Bill, by leaving out the Attainder; and on the 4th of April communicate theſe amendments to the Commons ‡ at a Conference, with their reaſons.—On the 7th of April, the Commons diſagree to theſe amendments; and communicate their reaſons for this diſagreement on the 8th.—On the ſame day, the Lords adhere to their alterations.—On the 9th of April, the Commons perſiſt in refuſing to agree to theſe amendments of the Lords; and deſire a Free Conference.—On the 10th

* The marginal note in the Lords Journal, calls this, "Bill of Attainder againſt *Conyers*, "and others."—It appears from Burnet's Hiſtory, Vol. I. p. 424, that Tonge had informed againſt one Conyers, a Benedictine, and had charged him with providing himſelf with a poniard, with which he undertook to kill the King.

† See, in Grey's Debates, Vol. VII. p. 51 to 105, the debates which aroſe on all theſe proceedings.—The reaſons urged on both ſides are in the Lords Journals.

‡ This proceeding of the Lords, of communicating their reaſons, together with their amendments, at a Conference, was irregular. The amendments ſhould have been ſent down with the Bill by meſſage—and the reaſons for making the alterations ſhould have been kept back, till their Lordſhips knew whether the Commons made any objection to thoſe amendments.—The effect of the alterations made by the Lords, was, to change it from a Bill of "Attainder," into a Bill for "Baniſhment."—See the debate upon this queſtion, in Grey's Debates, Vol. VII. p. 85 and 92.

and

and 12th of April, ſeveral Free Conferences * are held; in conſequence of which the Lords, on the 14th of April, agree with the Commons to the Bill of Attainder, if Lord Danby does not ſurrender by a certain day, the 21ſt of April †.

7. On Saturday the 13th of June, 1685, upon a meſſage from the King, acquainting the Commons, that the Duke of Monmouth was landed at Lyme in a hoſtile manner, with men and arms—they immediately order in a Bill for attainting him of High Treaſon.—This Bill was preſented on Monday the 15th of June, and read three times in the Houſe of Commons, and paſſed; and ſent to the Lords; and was read three times in the Houſe of Lords, on the ſame day, the 15th of June ‡.—The Royal Aſſent was given on the 16th §.

* See, in the Journals of the Houſe of Commons of the 12th of April, Sir Francis Winnington's report of what paſſed at the Free Conference on this ſubject.

† On the 14th of April, the Lords acquaint the King, by meſſage, that the Bill had paſſed both Houſes; and that his Majeſty, in regard of the ſhortneſs of the time allowed for Lord Danby's ſurrender, would be pleaſed to appoint a ſhort time, that the Bill may be tendered for his Royal Aſſent.—The King ſends for anſwer, That he will come on the 16th. On the 15th, at night, Lord Danby ſurrenders to the Gentleman Uſher of the Black Rod.—See Biſhop Burnet's account of this buſineſs in Vol. I. p. 453.—On the 16th of April, 1679, Lord Danby is committed, by the Lords, to the Tower.—On the 24th of March, 1680–1, near two years after, he petitions the Lords that he may be bailed—but the King coming on the 28th, and diſſolving the Parliament, no proceeding is had upon this petition. He continued priſoner in the Tower till the year 1684, when he was bailed by Lord Chief Juſtice Jefferyes.

‡ It appears from the Journal, that the King was himſelf preſent in the Houſe of Lords on the 15th.—Biſhop Burnet ſays, "Some "ſmall oppoſition was made by Lord Angleſey, "becauſe the evidence did not ſeem clear "enough, for ſo ſevere a ſentence, which was "grounded on the notoriety of the thing." Hiſtory, Vol. I. p. 641.

§ In the year 1743, a Bill paſſed for reſtoring the Duke of Buccleugh (the lineal deſcendant from the Duke of Monmouth) to his Engliſh titles of Earl of Doncaſter and Baron Scot of Tynedale. The Scotch titles of Duke of Buccleugh and Earl of Dalkeith, which came from the Lady, whom the Duke of Monmouth married, were not affected by the Bill of Attainder paſſed in the Parliament of England.

## VIII. *Bills of Pains and Penalties.*

1. ON the 2d of May, 1610, Sir Stephen Proctor being charged with ſeveral miſdemeanors*, is ordered into the cuſtody of the Serjeant; and on the 9th of May, being brought to the Bar, he is committed to the Tower—And on the 15th of May, a Bill is ordered in againſt him; this Bill is preſented on the 6th of June.—On the 12th Sir Stephen Proctor petitions.—On the 15th, the Bill is committed.—On the 22d of June, he again petitions for Counſel to be allowed him; and it is reſolved, not to allow him Counſel to be heard for his offence, or regarding the judgment, but to permit it reſpecting the ſtate of his lands and creditors.—On the 26th of June, the Bill is reported, and paſſed the Commons on the 3d of July †.

2. On

* See Carte's Hiſtory of England, Vol. III. p. 799.—It is ſaid, that Sir Stephen Proctor was one of the chief officers for executing the penal laws: and that, being charged by Sir J. Mallory, a Member of the Houſe, with corruption in the execution of his office, and with throwing aſperſions on himſelf, a motion was made for committing him to the Serjeant.

† Upon the ſecond reading of this Bill in the Houſe of Lords, on the 14th of July, Sir Stephen Proctor petitions, complaining of the refuſal of the Commons to hear him, in anſwer to, or defence of any miſdemeanors ſuppoſed to be committed by him.—And, "foraſmuch as by the juſtice of the realm, which "belongeth to every ſubject, as part of his "birthright, few or none have been con"demned or puniſhed in ſo high a nature, "upon naked relations, without oath, legal "trial, or hearing of the defendant to plead "and prove for himſelf, in lawful and juſt de"fence, what he may; he deſires to be heard "by himſelf or Counſel, to ſpeak to the points "of the Bill wherewith he is charged."—The Lords admit him to be heard, as well in perſon as by Counſel, on the 17th of July, and in the mean time the proſecutors againſt him to have thereof knowledge.—On the 17th he is heard; Sir John Mallory, and divers other perſons, being preſent, to ſpeak and allege againſt him; and the Bill is committed, for the better examination of parties on both ſides. —On the 19th of July, the Archbiſhop of York reports from the Committee, "That, "having examined the Bill, in preſence of Sir "Stephen Proctor, and his Counſel, and of "certain his Accuſers, and their Counſel, the "Committee could not find that Sir Stephen "Proctor, or his deputies, could be charged "in

2. On the 26th of May, 1641, it appearing from the report of a Committee, that Mr. Alderman Abel, and Mr. Kelvert, had been the principal projectors, both in the creation and execution of an illegal impoſition of 40 *s.* per tun, upon wine;—reſolved, That there ſhall be a Bill prepared, declaring the offences of Alderman Abel, and Richard Kelvert, to the end they may be made exemplary.—On the 19th of Auguſt, Mr. Glyn is ordered to preſent the Bill; and on the 26th of Auguſt, it is to be read the next day.—But I find nothing further done in it *.

3. On the 1ſt of July, 1661, the Houſe hear evidence, produced by the Attorney General, againſt ſeveral perſons who were concerned in the death of Charles the Firſt, as his Judges; and who were excepted out of the act of indemnity, and reſerved for ſuch pains, penalties, and forfeitures, not extending to life, as by any other Act ſhould be impoſed upon them.—The evidence being cloſed, and Counſel withdrawn, it was reſolved, *nemine contradicente*, "That a Bill be brought in for a confiſcation of the eſtates of the perſons deceaſed, and alſo of thoſe who are living †; with a further

" in any ſort to have abuſed or miſdemeaned " themſelves, in the execution of the com- " miſſion wherein he was employed; and that " therefore their opinion was, the Bill ſhould " reſt, and proceed no further."—The Lords, however, generally yielding due reſpect to the proceedings of the Lords Committees, yet, conſidering how great care is to be had for puniſhment and reformation of crimes, tending to the prejudice of the commonwealth and government—and, as the Lower Houſe have paſſed a Bill ſo ſevere againſt the ſaid Sir Stephen Proctor, to the judgment of which Houſe their Lordſhips have great reſpect—they therefore deſire a Conference with the Commons touching the ſaid Bill.—On the 23d of July this Conference is reported in the Houſe of Lords, That the Commons deſire, either that the Bill againſt Sir Stephen Proctor may paſs, or that he may be ſpecially excepted in the Bill of pardon.—The Lords adopt the latter expedient: and it is agreed, "That Mr. Attorney ſhall, with the pardon, attend his Majeſty; that, by his Highneſs's commandment, and in his Majeſty's preſence, a clauſe may be inſerted for excepting the ſaid Sir Stephen."

* On the 9th of April, 1642, it is reſolved, " That the ſubmiſſion of Alderman Abel, and " the £. 2000 which he offereth, ſhall be ac- " cepted."

† Sir Henry Mildmay, and Robert Wallop, were, whilſt the evidence was produced, preſent in cuſtody at the Bar of the Houſe.

pain againſt thoſe who are in cuſtody, and others who ſhall hereafter be apprehended *."

4. On the 4th of July, 1661, a bill is ordered, for executing certain perſons attainted of High Treaſon, for the murther of King Charles the Iſt.—It is read 1°, on the 22d of November, and ordered to be read 2° on the 25th, and that thoſe who are priſoners in the Tower ſhould appear, and offer what they can for themſelves. Several of the perſons named in the bill, being in cuſtody of the Lieutenant of the Tower, were brought to the Bar by the Serjeant, and heard † on the 25th of November.—On the 26th, after much debate, and a diviſion, the Bill is committed ‡.

5. On

* The further pain was, That Lord Viſcount Monſon, Sir Henry Mildmay, Sir James Harrington, Robert Wallop, and John Phelps, ſhould be impriſoned during their life.—And that Lord Monſon, Sir Henry Mildmay, and Sir James Harrington, ſhould be degraded from their honours and titles:—and that all the ſaid perſons, now alive, ſhould be drawn from the Tower upon hurdles, through the ſtreets, to and under the gallows at Tyburn, with ropes about their necks, and ſo back to the Tower, there to remain during their lives.—On the 11th of July, the Attorney General produces evidence againſt Sir A. Haſlerig, and his name is ordered to be inſerted in the Bill.—The Bill paſſed the Houſe of Commons on the 19th of July.—On the 25th of July, on the ſecond reading of the Bill, the Lords hear Lord Monſon, and Sir Henry Mildmay, at the Bar, and receive a petition from Mr. Wallop, who was prevented from attending by illneſs.—See this Act in the Statutes at Large, 13 Charles the IId. ch. 15.—This Sir James Harrington mentioned here, was not the Author of the Oceana and ſeveral other political treatiſes: but this Gentleman was alſo arreſted about this time by orders of Government, in 1661, and was committed to the Tower. He was confined afterwards in St. Nicholas's Iſland, near Plymouth. It does not appear, that any regular charge was ever made againſt him. His perſecutions and cruel treatment in theſe confinements brought on diſeaſes, which occaſioned his death in 1677. Biogr. Brit.—See in the 3d Volume of this Work, in the note, p. 34, the ſuſpicion on which he was, with ſeveral other perſons, taken up. The examination of Harrington on that occaſion in the Tower, by Lord Lauderdale, is very curious; and is preſerved in a Book, intitled, Britiſh Biography, Vol. V. p. 399.

† They ſeverally alleged, "That, upon his Majeſty's declaration from Breda, and the votes of this Houſe, and the King's proclamation of the 6th of June, they did render themſelves; being adviſed, that they ſhould thereby ſecure their lives."

‡ The names of ſeveral perſons are left out of the Bill, on the third reading, upon the 27th of January, "for that they have not yet been heard before this Houſe." But a new Bill is immediately ordered to be brought in for their execution.—On the 5th of February, the Lords make an order for bringing to their

5. On the 5th of December, 1667, a Bill for baniſhing and diſenabling the Earl of Clarendon, is read 1° in the Houſe of Lords.—On the paſſing of this Bill by the Lords, on the 12th of December, ſeveral Lords proteſt, and enter their reaſons.—The Bill was agreed to by the Commons, with amendments, on the 18th of December; and on the 19th received the royal aſſent *.

6. On the 10th of January, 1670, after examining into the aſſault that had been made on Sir John Coventry †, a Member of the

Bar the perſons named, "to be heard what "they can ſay concerning the Bill."—They are accordingly brought on the 7th of February, and ſeverally heard—why the Bill ſhould not paſs.—See, in the Lords Journal, their ſeveral allegations.—Harry Martin ſays, "That honourable Houſe of Commons, that "he did heretofore ſo idolize, had given him "up to death; and now this honourable "Houſe of Peers, which he had ſo much op-"poſed, eſpecially in their power of judicature, "is now made the ſanctuary for him to fly for "life." Biſhop Burnet gives this man the following character: "One perſon eſcaped, "as was reported, merely by his vices: Henry "Martin, who had been a moſt violent enemy "to Monarchy. But all that he moved for, "was upon Greek or Roman principles. He "never entered into matters of religion, but "on deſign to laugh, both at them and all "morality; for he was both an impious and a "vicious man. And now in his impriſon-"ment, he delivered himſelf up to vice and "blaſphemy.—It was ſaid, That this helped "him to ſo many friends, that upon that "very account he was ſpared."—Hiſtory, Vol. I. p. 162.—It does not appear that this Bill ever paſſed into a law.—See the trial of 29 regicides at the Old Bailey, for High Treaſon, in the State Trials, Vol. II. p. 298.

* See this Act in the Statutes at Large, 19th of Charles the IId, Ch. 10.—It appears from Grey's Debates, Vol. I. p. 64, that much oppoſition was given to this Bill in the Houſe of Commons, upon the principle of the cruelty of condemning any perſon, however guilty, without hearing him.—Immediately, therefore, after reading the Bill the firſt time, they reſolve to addreſs the King to iſſue a proclamation for ſummoning the ſaid Earl to appear by a day certain, and for apprehending him in order to his trial. The concurrence of the Lords being deſired to this reſolution, they diſagree to it;—and aſſign their reaſons on the 14th of December; which reaſons, on the 16th of December, the Commons declare not to be ſatisfactory;—and, on the 18th, they make ſeveral amendments to the Bill, to which the Lords agree.—See Lord Clarendon's account of this proceeding againſt him, in the Continuation of his Life, p. 466.

† The narrative of the circumſtances attending this extraordinary tranſaction is given in all the hiſtories of theſe times, particularly by Biſhop Burnet, in Vol. I. p. 269, 270.—See alſo the debate in Grey's Debates, Vol. I. p. 333, et ſubſ.—The Houſe of Commons reſented this attack upon their privileges ſo warmly, that they reſolve, "That no other "buſineſs be proceeded in, whilſt the Bill is "paſſing this Houſe." And accordingly no other buſineſs is done, from Tueſday to Saturday, whilſt this Bill is pending.—The Lords made ſeveral amendments to the Bill, particularly

the Houſe, the Houſe order in a Bill for fixing a day, to ſuch perſons as were actors in that fact, to come in and render themſelves to juſtice, or to be baniſhed *.—This Bill paſſes the Houſe of Commons on the 14th of January, and the Lords on the 24th †.

7. On the 9th of March, 1670, the Lords having received the report from a Committee, appointed to enquire into the late barbarous aſſaulting, wounding, and robbing the perſon of the Lord Steward of his Majeſty's Houſehold ‡, order in a Bill concerning ſuch perſons as appear to be probably guilty of that aſſault.

8. The Commons having brought up an impeachment againſt the Lord Treaſurer Danby, and having prayed that he be committed—the King, on the 22d of March, 1678, made a ſpeech from the throne to both Houſes, to acquaint them §, that he had granted

larly as to the day on which the parties were to ſurrender.—The Commons had fixed a particular day—the Lords altered that day to "within 25 days from the day that his Ma"jeſty's royal aſſent to this Act ſhall be en"tered and appear of record in the Journal "of the Houſe of Peers."—This brought on ſeveral Conferences and Free Conferences.—The Act however paſſed, and is in the Statutes at Large, 22d and 23d of Charles the IId, ch. 1.—See in Grey's Debates, Vol. I. p. 368, the debate upon the amendment made by the Lords, as to the day (upon which the Bill was to commence) being computed from the time of recording the royal aſſent.

* There was a general clauſe inſerted in this Bill, making it for the future felony to lie in wait, and cutting off or diſabling any limb, "with an intent to maim or diſfigure." Stat. 22 and 23 Charles II. ch. 1. ſect. 7th.—In the year 1721, two perſons, Woodburn and Coke, were tried upon this Act at the aſſizes at Bury, for diſfiguring Edward Criſpe; Coke, on being aſked, What he had to ſay in his defence, ſaid, "My intention was to kill Mr. Criſpe, "and not to maim or diſfigure him;" and then argued, That therefore, in point of law, he could not be convicted on an indictment grounded upon this Statute. They were however both convicted and executed.

*State Trials, Vol.* VI. *p.* 219—223.

† The Lords examine the witneſſes, to prove the allegations of the preamble to this Bill, not at the ſecond reading of the Bill, but in the Committee, on the 18th of January.

‡ This was the attempt, made by Blood and others, on the perſon of the Duke of Ormond.—See the account of this in Hume's Hiſtory of Charles the IId.'s reign, ch. 3. and the behaviour of the Lord Oſſory, the Duke of Ormond's ſon, towards the Duke of Buckingham, who was ſuſpected to be the adviſer of this attempt.

§ See this ſpeech in Grey's Debates, Vol. VII. p. 19, and the debate upon it in the Houſe of Commons. There is an extract from it before in the note *, p. 183, of this Volume.

his

his pardon to Lord Danby under the Great Seal.—The Lords immediately order a Bill to be brought in, "for rendering Lord Danby "incapable of coming into his Majeſty's preſence, and of all offices "and employments, and of receiving any grants from the Crown, "and of ſitting in the Houſe of Peers."—On the 25th of March, the Bill is committed *.—And in the Committee, on the 26th, it is altered, and changed into a Bill of baniſhment †; and that ſame day paſſed and ſent to the Commons.—It is read 1° in the Houſe of Commons, on the 27th of March, 1679, and immediately rejected ‡.

* Lord Angleſey diſſents to the queſtion of commitment, "becauſe the party is not ſummoned, which by the eſſential forms of juſtice ought to be," and for other reaſons.—On the 26th of March, the Lords, on a queſtion being put, "Whether to proceed further in this Bill without ſummoning the party concerned," reſolve in the affirmative.

† This alteration in the Bill was in conſequence of an order made by the Lords, on the 24th of March, for taking Lord Danby into the cuſtody of the Black Rod, and a report from the Black Rod, on the 25th, That Lord Danby had withdrawn himſelf, and was not to be found.

‡ See the debate in Grey's Debates, Vol. VII. p. 61.

IMPEACH-

# IMPEACHMENT.

## CHAPTER THE THIRD;

*From the Revolution to the Year* 1780.

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I. *What are ſufficient Grounds of Accuſation.*
II. *Proceedings in the Houſe of Commons previous to carrying up the Charge.*
III. *Form of delivering the Charge.*
IV. *Proceedings in either Houſe between the Delivery of the Charge and the Trial.*
V. *Proceedings on the Trial.*
VI. *Commons demand Judgment.*
VII. *Bills of Attainder.*
VIII. *Bills of Pains and Penalties.*

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IN this, as in the preceding chapter of this Title, the commencement of the Proceeding being ſometimes under the firſt and ſometimes under the ſecond head—the following is a table of references to the pages, where the Caſes are inſerted.

PROCEEDINGS AGAINST PERSONS IMPEACHED OR CHARGED.

1. Sir Adam Blair, Elliot, and others, 1689, of High Treaſon—p. 233.

2. Burton.

2. Burton and Graham, 1689, of high crimes and miſdemeanors—p. 233.
3. Earls of Saliſbury and Peterborough, 1689, of high treaſon—p. 234.
4. Earl of Caſtelmaine and others, 1689, of high treaſon—p. 240.
5. Lord Coningſby and Sir Charles Porter, 1693, of high treaſon and other crimes and miſdemeanors—p. 241.
6. Duke of Leeds, 1695, of high crimes and miſdemeanors—p. 234.
7. Lord Belhaven and others, 1695, of high crimes and miſdemeanors—p. 235.
8. Goudet and others, 1698, of high crimes and miſdemeanors—p. 236.
9. Earl Portland, Lord Somers, &c. 1701, of high crimes and miſdemeanors—p. 236.
10. Dr. Sacheverel, 1709, of high crimes and miſdemeanors—p. 237.
11. Earls of Oxford and Bolingbroke, 1715, of high treaſon and other high crimes and miſdemeanors—p. 237.
12. Earl of Strafford, 1715, of high crimes and miſdemeanors—p. 238.
13. Duke of Ormond, 1715, of high treaſon and other high crimes and miſdemeanors—p. 237.
14. Earls of Derwentwater, &c. 1715, of high treaſon—p. 238.
15. Earl of Macclesfield, 1724, of high crimes and miſdemeanors—p. 238.
16. Lord Lovat, 1746, of high treaſon—p. 239.

## I. *What are ſufficient Grounds of Accuſation.*

1. ON the 13th of June, 1689, the Houſe being informed, that Sir Adam Blair, Captain Vaughan, Captain Mole, Doctor Elliot, Dr. Grey, and ſeveral other perſons, had diſperſed a ſeditious and treaſonable * paper, printed, and intitled, "A Declara-"tion of King James the Second;" and the ſaid paper being read at the table; Reſolved, That Blair, Vaughan, Mole, Elliot, and Grey, be impeached of "High Treaſon," for diſperſing the ſaid paper.—And a Committee is appointed to prepare the impeachment, with power to ſend for perſons, papers, and records.

2. A report having been made to the Houſe, on the 23d of May, 1689, from a Committee, of ſeveral miſdemeanors committed by Burton and Graham, in expending public money in the proſecution of law-ſuits, in the Reigns of Charles II. and James II. a Committee is appointed, on the 24th of October, to examine what precedents there are in the Journals of commitments by the authority of the Houſe,—This Committee report on the 25th of October †; and the Houſe being informed that ſeveral of the priſoners in the Tower are now bailing in the Court of King's Bench, the Houſe order the Governor of the Tower immediately to bring the priſoners to the Houſe.—Burton and Graham being accordingly brought, the report of the 23d of May was read to them; and being heard, they were committed to the cuſtody of the Serjeant

* See in Grey's Debates, Vol. IX. p. 302, 356, and 365, the debates upon this ſubject; particularly the ſpeech of Mr. Hawles, p. 305, upon the conſtruction of the ſtatute of treaſons, the 25th Edw. III.

† See this report in the Journal.

for ſeveral high crimes and miſdemeanors objected againſt them; and a Committee was appointed to examine witneſſes, and to prepare a charge againſt them *.

3. On the 26th of October, 1689, the Houſe reſolve, That an impeachment of High Treaſon be ſent to the Lords againſt the Earl of Saliſbury and Earl of Peterborough †, "for departing "from their allegiance, and being reconciled to the church of "Rome ‡;" and that Mr. Foley do go to the Lords, and, at their Bar, in the name of the Commons, impeach the ſaid Lords, and acquaint the Lords, that the Commons will ſend "further" articles againſt them in convenient time, and do deſire they may be committed.—The Lords immediately order them to be committed to the Tower §.

4. On the 27th of April, 1695, the Houſe having read a re-

* I do not find that this Committee made any report.

† This was Henry Earl of Peterborough, uncle to Charles Earl of Monmouth, to whom (on Henry's dying in 1697, without iſſue male) the title of Peterborough deſcended.

‡ This offence was conſtituted treaſon by the ſtat. 23d Eliz. Ch. 1. ſect. 2. and by 3d Jam. I. Ch. 4. ſect 23.

§ On the 2d of October, 1690, theſe two Lords preſent petitions to the Houſe of Lords, ſtating the length of time they have been impriſoned, "notwithſtanding a diſſolution, and "ſeveral prorogations of Parliament have in-"tervened, as alſo an Act of Free and Gene-"ral Pardon;" (the Parliament had been diſſolved the 6th of February, and a new Parliament met the 20th of March, 1689); and praying to be diſcharged.—The Judges are ordered to attend, to give their opinion, "Whether the Earls of Peterborough and "Saliſbury are pardoned by the Act of Ge-"neral Pardon."—On the 6th of October, the Judges give their opinion, "That if their "crimes were committed before the 13th of "February, 1688, and not in Ireland, nor "beyond the ſeas, they are pardoned by the "ſaid Act."—Then the queſtion being put, Whether theſe Lords ſhall be diſcharged of their impriſonment?—it was reſolved in the negative; and they were both ordered to be admitted to bail.—But on the 30th of October, 1690, they were diſcharged.—See ſome very judicious obſervations on this caſe, in a pamphlet, printed in 1791, intitled "A Re-"view of the Arguments in favour of the "Continuance of Impeachments notwithſtand-"ing a Diſſolution," p. 49 to 60.—Mr. Juſtice Foſter very properly obſerves, "That, "this being a caſe of Impeachment, it may "be doubtful, whether the Lords did right "in diſcharging the parties accuſed, without "giving the Commons an opportunity of "being heard."

*Foſter's Cr. Law, p.* 151.

port from a Joint-Committee of both Houſes relating to the diſtribution of money by the Eaſt India Company—reſolve, "That "there doth appear to this Houſe, upon the ſaid report, that there "is ſufficient matter to impeach the Duke of Leeds of high "crimes and miſdemeanors *."—They then reſolve, "That Thomas "Duke of Leeds, Preſident of his Majeſty's Moſt Honourable "Privy Council, be impeached of high crimes and miſdemea-"nors;" Mr. Comptroller is ordered to go up to the Lords, and, "at their Bar, impeach the Duke of Leeds of high crimes and miſdemeanors †.

5. Upon reading a report from a Committee, appointed to examine what methods were taken to obtain an Act of Parliament, paſſed in Scotland, for eſtabliſhing an Eaſt India Company, and who were the ſubſcribers, promoters, and adviſers thereof, the Houſe, on the 21ſt of January, 1695, reſolve, "That the Direc-"tors of the ſaid Company adminiſtering, and taking here, in this "kingdom, an oath, *de fideli*, is a high crime and miſdemeanor." And alſo, "That the Directors of the ſaid Company, under colour "of a Scotch Act of Parliament, ſtyling themſelves a Company, "and acting as ſuch, and raiſing monies in this kingdom for car-"rying on the ſaid Company, are guilty of a high crime and miſ-"demeanor."—They then reſolve, "That the Lord Belhaven, and "ſeveral other perſons, be impeached of the ſaid high crimes and "miſdemeanors."—And a Committee is appointed to prepare im-

* This is the third time that articles of impeachment had been exhibited in the Houſe of Commons againſt the Duke of Leeds.—The firſt were in 1675, upon which, the Houſe reſolved, "That there was not ſufficient matter "contained in them to impeach the Lord "Treaſurer."—See before p. 140.—The next were in 1678, upon which Lord Danby was impeached, to which impeachment he pleaded the King's pardon.—See before, p. 115.

† Before the meſſage is carried up, the Houſe being informed, that the Duke of Leeds was at the door, and deſired to be heard—he is admitted and heard—"the Mace being all "the while on the table." And being withdrawn, Mr. Comptroller went up with the meſſage.

peachments againſt the ſaid perſons, which Committee hath power to ſend for perſons, papers, and records*.

6. On the 16th of April, 1698, a report is made from a Committee appointed to conſider of a petition of the Royal Luſtring Company, in which it appeared, that ſeveral perſons had been concerned in ſmuggling over French ſilks.—On the 20th of April, the Houſe take the ſaid report into conſideration, and immediately reſolve, "That Goudet, Barreau, and ſeveral other perſons, who "appeared to be concerned in the ſaid illicit trade, be impeached of "high crimes and miſdemeanors †.

7. On the 1ſt of April, 1701, Colonel Granville reports from a Committee on the State of the Nation, "That it is the opinion of "the Committee, That William Earl of Portland, by negociating "and concluding the Treaty of Partition, which was deſtructive to "the trade of this kingdom, and dangerous to the peace of Europe, "is guilty of an high crime and miſdemeanor."—This reſolution was agreed to by the Houſe; and they then reſolve, "That William "Earl of Portland be impeached of high crimes and miſdemeanors." —Sir John Leveſon Gower is ordered to go up to the Lords with the impeachment.—The ſame proceeding is had on the 14th of April, againſt Lord Somers, the Earl of Orford, and Charles Lord Halifax, for adviſing the ſaid Treaty of Partition ‡.

8. On

* It does not appear that this Committee ever make any report of the articles of impeachment, or that the perſons are impeached at the Bar of the Lords.—On the 29th of January, it being reported from this Committee, "That Roderick Mackenzie had en-"deavoured to ſuppreſs the evidence he had "given againſt the ſaid perſons voted to be "impeached," he is ordered into the cuſtody of the Serjeant; but not being to be found, the Houſe, on the 8th of February, addreſs the King to iſſue a proclamation for apprehending him.

† The perſons impeached, are immediately ordered by the Commons, to be taken into the cuſtody of the Serjeant.—And the Attorney General is ordered to proſecute ſeveral other perſons, for ſimilar offences.—On the 27th of May, two other perſons are impeached upon the ſame grounds.

‡ See theſe proceedings in the State Trials, Vol. V. p. 339.—On the 16th of April, the day

8. On the 13th of December, 1709, a complaint is made in the Houſe of Commons of two ſermons preached by Dr. Sacheverel *. He is ordered to attend on the 14th, at the Bar, when he confeſſes the preaching, printing, and publiſhing the ſermons.—Being withdrawn, a queſtion is propoſed, "That the ſaid Doctor Henry Sacheverel be impeached of high crimes and miſdemeanors."—He is again called in, and heard what he had to offer to the Houſe; and being withdrawn, the Houſe reſolve, (1) "That he be impeached of high crimes and miſdeameanors:" and, (2) That "Mr. Dolben do go to the Lords, and, at their Bar, impeach the ſaid Doctor Henry Sacheverel of high crimes and miſdemeanors, and acquaint the Lords, that this Houſe will, in due time, exhibit articles againſt the ſaid Doctor Sacheverel."—And a Committee is appointed to draw up the articles of impeachment †.

9. On the 10th of June, 1715, immediately after reading the report from the Committee of Secrecy, the Houſe reſolve, "to impeach Henry Viſcount Bolingbroke, and Robert Earl of Oxford, of High Treaſon and other high crimes and miſdemeanors ‡." —And it is referred to the Committee of Secrecy to draw up the

day after the impeachments againſt theſe Lords are delivered at the Bar of the Houſe of Lords, the Lords reſolve, "That an addreſs be preſented to his Majeſty, that he would be pleaſed not to paſs any cenſure or puniſhment againſt theſe four noble Lords, until the Impeachment depending againſt them ſhall be tried." Lord Romney reports on the 17th, that he had delivered the addreſs. The Lords immediately appoint a Committee to ſearch the Journals, "Whether, upon any addreſs from this Houſe to the King, there hath been no anſwer returned?"—I don't find, that this Committee make any report.

* Several paragraphs being read, the Houſe reſolve, "That the ſaid ſermons are malicious, ſcandalous, and ſeditious libels, highly reflecting on her Majeſty, the late happy revolution, and the Proteſtant ſucceſſion, and upon both Houſes of Parliament, and tending to alienate the affections of her Majeſty's ſubjects."

† Dr. Sacheverel is then ordered to be taken into the cuſtody of the Serjeant at Arms attending this Houſe.

‡ On the 21ſt of June, 1715, the Commons alſo reſolve to impeach James Duke of Ormond, of High Treaſon, and other high crimes and miſdemeanors.—See the further proceedings on the 5th, 6th, 8th, and 10th of Auguſt.

articles of impeachment, and prepare the evidence againſt theſe two Lords *.

10. On the 22d of June, 1715, the Houſe of Commons, on further conſideration of the report from the Committee of Secrecy, reſolve to impeach the Earl of Strafford of high crimes and miſdemeanors, and refer it to the ſame Committee to draw up articles and prepare evidence againſt him.

11. On the 9th of January, 1715, the Houſe of Commons reſolve to impeach the Earl of Derwentwater, the Earl of Winton, and ſeveral other Scotch Lords, of High Treaſon †.

12. On the 9th of February, 1724, the King ſends a meſſage to both Houſes of Parliament, "That his Majeſty, having reaſon "to apprehend that the ſuitors of the Court of Chancery were in "danger of loſing money ‡, from the inſufficiency of ſome of the "Maſters, had ordered an enquiry to be made; the reſult of which "enquiry, in ſeveral reports, he had directed to be laid before Par-"liament."—The ſaid papers were read in the Houſe of Commons; and, on the 12th of February, they reſolve, "That Thomas

* On the 30th of July, 1715, the Commons, in purſuance of the power they had reſerved of exhibiting further articles againſt Lord Oxford, do agree to ſeveral other articles of high crimes and miſdemeanors, which are ordered to be carried to the Lords on the 2d of Auguſt, with a clauſe, ſaving liberty to the Commons, ſtill to exhibit further articles againſt the Earl of Oxford.

† Theſe Lords had been engaged in the rebellion; but it does not appear that the Commons had before them any papers or evidence of the facts, or any other ground for their proceeding than common fame.

‡ This ſubject had been brought before the Houſe of Commons on the 23d of January preceding, by a petition from Lord Oxford and Lord Morpeth, Guardians and Committees of the perſon and eſtate of a lunatic, complaining, "That upon examining into the "accounts of the Maſters in Chancery, con-"ſiderable deficiencies appeared."—A motion being made, "That the officers of the "Court of Chancery do lay before the Houſe, "copies of the orders of the Court and of the "accounts of the Maſters;" and a debate ariſing upon this queſtion, this debate is adjourned till the 9th of February, on which day the Commons receive his Majeſty's meſſage,

"Earl

" Earl of Macclesfield be impeached of high crimes and miſde-
" meanors."—Sir George Oxenden is ordered to go up with the impeachment *, and then a Committee is appointed to draw up the articles †.

13. On the 11th of December, 1746, Mr. Chancellor of the Exchequer, by the King's command, communicates to the Houſe a letter, ſigned " Lovat," relating to the Pretender and the late Rebellion.—The letter is read, and ſome perſons called in and examined, to prove the hand-writing.—And then the Houſe immediately reſolve to impeach Simon Lord Lovat of High Treaſon.

* The Commons immediately order in a Bill for indemnifying the Maſters in Chancery from the penalties of the Act of the 5th and 6th of Edw. VI. ch. 16, " Againſt buying " and ſelling of offices," upon diſcovering what conſideration they paid for their reſpective offices.—This Bill was paſſed through both Houſes with uncommon expedition, and received the Royal Aſſent on the 17th of February.

† This Committee, upon application to the Houſe on the 24th of February, are empowered to examine the witneſſes in the moſt ſolemn manner.—See, upon this ſubject, what is ſaid in the 2d Volume of this Work, p. 150, under title, " Whether the Houſe of Commons can " adminiſter an Oath."

## II. *Proceedings in the Houſe of Commons previous to carrying up the Charge.*

1. ON the 24th of June, 1689, the Attorney General reports the articles of impeachment of High Treaſon againſt Blair, Vaughan, and others, for diſperſing a treaſonable paper *.—They were read, agreed to, and ordered to be ingroſſed.

2. On the 26th of October, 1689, the Houſe being informed that the Earl of Caſtelmaine, Sir Edward Hales, Charles Hales, Eſquire, and Obadiah Walker, priſoners in the Tower †, were brought to the King's Bench by the Governor of the Tower, by writs of habeas corpus, in order to their bailing; Ordered, That a warrant be ſent to the Governor of the Tower immediately, to bring the ſaid perſons before this Houſe, to anſwer ſuch matters as ſhall be charged againſt them.—They are ſeverally brought to the Bar, on the 26th and 28th of October, and, being heard, are charged in the Tower, by warrant from this Houſe, for High Treaſon, in being reconciled to the church of Rome, and other high crimes and miſdemeanors ‡.

3. On

* Sir George Treby was at this time Attorney General, and Sir John Somers Solicitor General; Sir William Williams, Mr. Hawles, Sir Thomas Littleton, were alſo of the Committee appointed to draw up theſe articles; but it does not appear, that any of them doubted, "Whether the Houſe of Commons were competent to impeach a Commoner of High Treaſon?"

† It appears from the Journal of the 25th of October, that they had before been committed to the Tower for High Treaſon, in being reconciled to the ſee of Rome.

‡ In the warrant for charging Lord Caſtelmaine, theſe words are ordered to be inſerted, "in endeavouring to reconcile this kingdom to the ſee of Rome."—See the proceedings at large, with Lord Caſtelmaine's anſwer at the Bar of the Houſe of Commons, in the State Trials, Vol. IV. p. 393. Theſe crimes were declared to be High Treaſon by the Statutes of the 23d of Queen Elizabeth, ch. 1.

3. On the 16th of December, 1693, the Earl of Bellamont * preſents to the Houſe articles of impeachment of High Treaſon, and other crimes and miſdemeanors, againſt Thomas Lord Coningſby, and Sir Charles Porter, two of the late Lords Juſtices in Ireland.—The ſaid articles were delivered in and read at the table: The Houſe proceeded immediately, and afterwards on the 22d of December, and ſeveral ſubſequent days, to the hearing of witneſſes to prove the ſaid articles.—The examination of evidence being finiſhed, Lord Coningſby and Sir Charles Porter were on the 20th of January, ſeverally heard thereupon in their places; and being withdrawn †, the Houſe reſolve to proceed in the conſideration of the ſaid articles, article by article.—And on the 29th of January, the Houſe conſider them article by article, and upon ſeveral of them reſolve, "That there does not appear to "the Houſe ſufficient matter to ground an impeachment upon." Upon ſome of the articles, the Houſe reſolve, "That the proceed-"ings of Lord Coningſby and Sir Charles Porter, mentioned in "the ſaid articles, were illegal and arbitrary; but that, conſidering "the ſtate of affairs in Ireland at that time, the Houſe doth not "think fit to ground an impeachment thereupon." And then Lord Coningſby and Sir Charles Porter are ordered to take their places in the Houſe.

ch. 1. ſect. 2. and of the 3d of James I. ch. 4. ſect. 23. which Acts, as far as they relate to theſe offences, are ſtill in force. The Parliament was diſſolved on the 6th of February, 1689; on the 10th of February, Lord Caſtelmaine was brought up by a writ of habeas corpus, and bailed by the court of King's Bench, no objection being made by the Attorney General.

* So on the 4th of April, 1786, Mr. Burke, in his place, preſents to the Houſe ſeveral articles of charge of high crimes and miſdemeanors againſt Warren Haſtings, Eſq.—And on the 12th of December, 1787, Sir Gilbert Elliot, charges Sir Elijah Impey with ſundry high crimes and miſdemeanors, and preſents articles of the ſaid charge, to the Houſe.—See the further proceedings on this charge againſt Sir Elijah Impey on the 17th of December, 1787, and 4th and 7th February, 1788.

† An order is made, when the debate of the articles is adjourned to another day, That the Members accuſed ſhall take their places in the Houſe, until the adjourned debate is reſumed.

4. When the impeachment is voted againſt Doctor Sacheverel, on the 14th of December, 1709 *, he is immediately ordered into the cuſtody of the Serjeant †; and on the 15th, Mr. Dolben, who is ordered to go up with the impeachment, is directed to acquaint the Lords, "That Dr. Sacheverel is in cuſtody of the "Serjeant, ready to be delivered to the Gentleman Uſher of the "Black Rod, when the Lords ſhall pleaſe to give orders therein." Mr. Dolben, the ſame day, reports, That he had executed the orders of the Houſe.

5. The Houſe of Commons having, on the 10th of June, 1715, reſolved to impeach Lord Oxford, and Lord Bolingbroke, of High Treaſon, and other high crimes and miſdemeanors, appoint a Committee to draw up the articles.—Theſe articles, againſt Lord Oxford, are reported by Mr. Walpole, on the 7th of July, and read.—On the 8th of July, they are read a ſecond time, article by article, and amended, and ſeverally voted to be the articles of impeachment.—On the 9th of July, when ingroſſed, they are read a third time, and ordered to be carried to the Lords ‡.

6. On the 15th of June, 1715, the Committee of Secrecy applied for leave to examine the perſons, taken into cuſtody, in the moſt ſolemn manner, according to former precedents.—The Houſe of

* See in the Appendix to the 8th Vol. of State Trials, p. 540, N° 34, an account of what paſſed moſt remarkable, relating to the caſe of Dr. Sacheverel, in the Houſe of Commons.—The trial at large is in Vol. V. p. 645.

† Mr Haſtings was impeached at the Bar of the Houſe of Lords on the 11th of May, 1787—but was not ordered into the cuſtody of the Serjeant till the 21ſt, after ſeveral of the articles of the impeachment had been carried up to the Lords.

‡ On the 30th of July, 1715, the Commons agree to ſeveral other articles of high crimes and miſdemeanors againſt Lord Oxford; which, on the 2d of Auguſt, they order to be carried to the Lords.—And they enter a further proteſtation, ſaving to themſelves a liberty of exhibiting, at any time hereafter, any other accuſations or impeachments againſt the ſaid Earl.

Commons

Commons order, " That ſuch Members of the Committee of Se-
" crecy, as are Juſtices of the Peace for the county of Middleſex, do
" examine Matthew Prior * and Thomas Harley, now in cuſtody of
" the Serjeant, touching the matters contained in the ſeveral books
" and papers referred to them †."

7. The Houſe of Commons having, on the 10th of June, 1715, reſolved to impeach Lord Bolingbroke of High Treaſon, and other high crimes and miſdemeanors, and having appointed the Committee of Secrecy to draw up the articles, Mr. Walpole, on the 4th of Auguſt, reports the articles that had been prepared—Theſe are read twice, and ſeverally agreed to, and ordered to be ingroſſed.—On the 6th of Auguſt, the ingroſſed articles, with the ſaving clauſe for liberty to exhibit further articles, are again read, and ordered to be carried to the Lords—with a meſſage, to pray and demand,

* Mr. Walpole, on the 17th of June, acquaints the Houſe, That Matthew Prior having been accordingly examined, there appeared matters of ſuch importance, that the Committee of Secrecy had directed him to move, " That he be confined in cloſe cuſtody, and " no perſon permitted to come to him;" which is ordered accordingly; and that no perſon be permitted to come to him without leave from Mr. Speaker.—In the Biographia Britannica, Vol. V. p. 3445, in a note, there is Prior's own account of this examination before the Committee for above ten hours, and of the manner of his being committed to " cloſe cuſtody."—He had been Miniſter at Paris from Q. Anne, and had been engaged in negotiations there, after the peace of Utrecht. The part which Prior had in theſe tranſactions, appears from the report from the Committee of Secrecy, p. 28 and 29, which was printed by order of the Houſe of Commons.—On the 27th of Auguſt, 1715, Mr. Speaker acquainted the Houſe, that he had received a letter from Mr. Prior, relating to the circumſtances of his confinement.—This letter is referred to the Committee appointed to draw up articles of impeachment; and on the 20th of September, Mr. Walpole reports, the ſtate of the proceedings relating to Mr. Prior's examination and " cloſe confinement," which the Committee declare to be " not only a-
" greeable to former precedents upon the
" like occaſions, but neceſſary and eſſential to
" that great duty and privilege of the Houſe
" of Commons, of redreſſing grievances and
" bringing great offenders to juſtice."

† See what is ſaid (in the 2d Vol. of this Work, under title, " Whether the Houſe of " Commons can adminiſter an oath,") reſpecting this proceeding, of taking examinations by Members, being Juſtices of the Peace for Middleſex or Weſtminſter.

" That Lord Bolingbroke be ſequeſtered from Parliament, and " forthwith committed to ſafe cuſtody."

8. On the 31ſt of Auguſt, 1715, the articles of impeachment of high crimes and miſdemeanors againſt the Earl of Strafford are reported from the Committee appointed to prepare them, are read twice and agreed to, and ordered to be ingroſſed.—On the 1ſt of September, the ingroſſed articles, with the ſaving clauſe, are again read, and ordered to be carried to the Lords by Mr. Aiſlabie.—And the Houſe order, " That Mr. Aiſlabie, before he exhibits the ſaid " articles, do impeach the ſaid Earl of Strafford of high crimes and " miſdemeanors."

9. On the 9th of January, 1715, when the votes of impeachment are paſſed againſt the Scotch Lords for High Treaſon, and ſeveral Members are ordered to go up to the Lords for that purpoſe, the Houſe reſolve, " That whereas the ſaid Peers are already " under commitment, this Houſe will therefore not deſire the Lords, " that they may be committed to ſafe cuſtody, " as hath been " uſual in caſes of like nature." The meſſengers from the Commons report ſeverally, that they had executed the commands of the Houſe; and then the Houſe appoint a Committee to draw up the articles and prepare evidence *.—Theſe articles are immediately reported; read once, and on the ſecond reading amended and agreed to.—They are ingroſſed, with a ſaving clauſe, and carried up to the Lords †.

10. On the 11th of December, 1746, after the Houſe have reſolved to impeach Simon Lord Lovat of High Treaſon, the Houſe

* On the 10th of Januury, this Committee have leave to ſit *de die in diem*; and have power to ſend for perſons, papers, and records.

† All this proceeding, from the reſolution of impeachment to the delivering the articles to the Lords, was in the courſe of the ſame day.—On the 13th of January, theſe articles are ordered by the Houſe of Commons to be printed.

being

being informed, That the ſaid Lord Lovat is now a priſoner in the Tower, they reſolve, " That, whereas the ſaid Peer is already under " commitment, this Houſe will therefore not deſire the Lords, that " he may be committed to ſafe cuſtody, as hath been uſual in " caſes of like nature *."

* As ſoon as the articles are read in the Houſe of Lords, it appears from the Journal, that the Duke of Newcaſtle in this inſtance of Lord Lovat, and the Lord Viſcount Townſhend in the preceding caſe of the Scotch Lords, acquainted the Houſe, " That the im- " peached Lords were already under commit- " ment in the Tower of London."

## III. *Form of delivering the Charge.*

1. ON the 26th of June, 1689, the ingroſſed articles of impeachment againſt Blair, Vaughan, and others, being read, Reſolved, That the ſaid impeachment be delivered at the Bar of the Houſe of Lords—And, that Colonel Birch do carry up the ſaid impeachment to the Lords.—When theſe articles are brought to the Lords, they appoint a Committee, on the 26th of June, to inſpect the Journals, What hath been the method and proceedings upon impeachments from the Houſe of Commons.—This Committee report, on the 27th, " That they do not find any particular " account, touching the method of receiving impeachments.— " They find, ſometimes impeachments have been delivered at Con- " ferences, and ſometimes with, and ſometimes without articles; " —but when they have been delivered at the Bar of the Houſe, " it hath always been by way of meſſage from the Houſe of Com- " mons; but it doth not appear, whether the Lords on the Wool- " ſack were ſitting whilſt the articles were reading;—nor doth it " appear, that any difference hath been made, between the receiving " a meſſage, where an impeachment hath been brought up, and any " other meſſage."

2. On the 26th of October, 1689, the Earls of Saliſbury and Peterborough are impeached at the Bar of the Houſe of Lords, of High Treaſon; and the Lords are informed, That further articles will be exhibited in a convenient time; and the Commons deſire they may be committed. The Lords, accordingly, immediately order them to be committed to the Tower.

3. On

3. On the 27th of April, 1695, the Houſe having reſolved to impeach the Duke of Leeds, Mr. Comptroller is ordered to go up to the Lords, and at their Bar, in the name of the Houſe of Commons, and of all the Commons of England, to impeach Thomas Duke of Leeds of high crimes and miſdemeanors, and to acquaint the Lords, That this Houſe will in due time exhibit particular articles againſt him, and make good the ſame.

4. On the 20th of April, 1698, the Houſe having reſolved, "That Goudet, and others, concerned in an illicit importation of "French ſilks, be impeached of high crimes and miſdemeanors," Sir Rowland Gwynn is ordered to go up to the Lords, and at their Bar, in the name of all the Commons of England, to impeach Goudet, and the reſt, of high crimes and miſdemeanors; and acquaint the Lords, that this Houſe will, in due time, exhibit articles againſt the ſaid perſons *.

5. On the 1ſt of April, 1701, Sir John Leveſon Gower is ordered to go up to the Lords, and at their Bar, in the name of the Houſe of Commons, and of all the Commons of England, to impeach William Earl of Portland of high crimes and miſdemeanors; and acquaint the Lords, That this Houſe will, in due time, exhibit particular articles againſt him, and make good the ſame.—A Committee is then appointed to draw up the articles.—On the 14th of April, impeachments are voted, and ordered to be carried up to the Bar of the Lords, againſt Lord Somers—the Earl of Orford—and Charles Lord Halifax, on the ſame charge of adviſing the Treaty of Partition †.—And on the 15th of April, the former Com-

* This meſſage was not carried up to the Lords till the 10th of May.

† Mr. Harcourt carries up the meſſage for impeaching Lord Somers; Colonel Byerly, that againſt Lord Orford; and a Mr. Bruges, againſt Lord Halifax. See in a ſubſequent part of this Volume, in a note, under title, "Proceedings on the Trial," N° 3, Lord Hardwicke's obſervations on the policy of the Treaty of Partition. See alſo Biſhop Burnet's account of theſe tranſactions, Hiſtory of his Own Times Vol. II. p. 264.

mittee are directed to draw up the articles againſt theſe Lords.—And on the 2d of May, this Committee are impowered to ſend for perſons, papers, and records.

6. On the 15th of December, 1709, Mr. Dolben delivers at the Bar of the Houſe of Lords, the charge of impeachment againſt Doctor Sacheverel; and that the Commons will, in due time, exhibit particular articles, and make good the ſame.—He alſo acquaints the Lords, "That Doctor Sacheverel is in cuſtody of the "Serjeant at Arms, ready to be delivered to the Gentleman Uſher "of the Black Rod, when the Lords ſhall pleaſe to give order "therein."

7. On the 9th of July, 1715, Lord Coningſby is ordered to carry to the Lords, the articles of impeachment agreed upon againſt Lord Oxford *; and directed, before he exhibits the ſaid articles, to impeach

* This impeachment was for High Treaſon, and other high crimes and miſdemeanors.—The 11th and 12th were the articles which contained the accuſation of treaſon.—It was propoſed in the Lords, on the 9th of July, as ſoon as the articles had been read, "That it "ſhould be propoſed to the Judges, as a queſ-"tion of law, Whether theſe articles con-"tained in them treaſon, by the laws of "Great Britain?" but it was reſolved in the negative.—Then Lord Oxford was heard, and withdrew; and the 11th article being again read—it was reſolved, "That Lord Oxford, "being impeached by the Commons of High "Treaſon, ſpecified in certain articles, and "of other high crimes and miſdemeanors, be "committed to the Black Rod." The Tower of London was propoſed, but changed to the Black Rod, in regard to Lord Oxford's ſtate of health.—But on the 12th of July, he is committed to the Tower.—It was much debated, even in the Houſe of Commons, Whether the charges in this 11th article amounted to the crime of High Treaſon. Sir Joſeph Jekyll, though one of the Committee of Secrecy appointed to prepare the articles, was of opinion, "That it did not amount to High "Treaſon,"—The ſubſtance of this article was, "That the Earl of Oxford did, during "the war, falſely, maliciouſly, wickedly, and "*traitorouſly* counſel and adviſe the French "King, in what manner Tournay might be "gained from the States General; contrary "to the duty of his allegiance, and the laws "and ſtatutes of this realm." On a diviſion for leaving out the words "and traitor-"ouſly," it was carried by 247 to 131, that thoſe words ſhould ſtand part of the article. Lord Oxford, in his anſwer to this 11th article, denies, That he ever did adviſe the giving up Tournay to the French King; but adds, "That during the negotiations of the "late peace. he was one of the Privy Council; "and that whatever Counſel he gave, he gave "it

peach the ſaid Earl, and to pray and demand, " That the ſaid Earl " may be ſequeſtered from Parliament, and forthwith committed to " ſafe cuſtody."—To which requeſt the Lords, on the 11th of July, anſwer, " That they had ordered the Black Rod to attach him, and " he is now in ſafe cuſtody."

8. On delivering the further articles of impeachment for high crimes and miſdemeanors againſt Lord Oxford, Lord Coningſby is directed, on the 2d of Auguſt, 1715, to acquaint the Lords, " That " the Commons having received further information of divers " other high crimes and miſdemeanors, committed by Robert " Earl of Oxford, have exhibited further articles of impeach- " ment *."

9. On the 6th of Auguſt, 1715, Mr. Walpole, at the Bar of the Lords, impeaches Lord Bolingbroke of High Treaſon, and other high crimes and miſdemeanors; and, in the name of the Houſe of Commons, prays and demands, " That he be ſequeſtered from Par- " liament, and forthwith committed to ſafe cuſtody."—He then alſo delivers in a copy of the articles.—Theſe articles are read, and the Lords immediately reſolve †, " That, Lord Bolingbroke being " impeached by the Commons of High Treaſon, and other high " crimes and miſdemeanors; and certain articles, ſpecifying the ſaid " High Treaſon, and other high crimes and miſdemeanors, being " exhibited againſt him; he be forthwith attached by the Gentle- " man Uſher of the Black Rod, and brought to the Bar to anſwer " to the ſaid articles ‡."—And a meſſage is ſent to the Commons to acquaint them with this.

10. On

" it as a Privy Counſellor and no otherwiſe; " and doth inſiſt, That for any Privy Coun- " ſellor or Miniſter of State, during nego- " tiations for peace, to adviſe or negotiate " concerning the giving up any town, on the " concluſion of peace, as part of the terms " and conditions of ſuch peace, is not High " Treaſon, by any law of the realm."

* At the end of theſe additional articles, there is a clauſe inſerted, ſaving a liberty to the Commons, of exhibiting, at any time hereafter, any other accuſations or impeachments againſt the ſaid Earl.

† See ſimilar proceedings againſt the Duke of Ormond, on the 8th of Auguſt, 1715.

‡ The Gentleman Uſher acquaints the Lords,

10. On the 1ſt of September, 1715, Mr. Aiſlabie, at the Bar of the Houſe of Lords, impeached the Earl of Strafford, in the name of the Commons, of high crimes and miſdemeanors, and delivered in the articles that had been prepared.—Theſe articles were read, and Lord Strafford was heard in his place, and deſired a copy of the articles; which is granted to him.

11. On the 9th of January, 1715, the Scotch Lords are ſeverally impeached at the Bar of the Lords for High Treaſon; and very ſoon after, in the courſe of the ſame day, the articles of impeachment are exhibited againſt them by the Commons, which are read; and then the Lord Viſcount Townſhend acquaints the Houſe, "That the "ſaid ſeveral Lords impeached are already under commitment in "the Tower."—The Lords are ordered to be brought to the Bar, the next day, to hear the articles read.

12. On the 13th of February, 1724, Sir George Oxenden, at the Bar of the Lords, in the name of the Houſe of Commons, and of all the Commons of Great Britain, impeached Thomas Earl of Macclesfield of high crimes and miſdemeanors, and acquainted the Lords, "That the Houſe of Commons would, in due time, "exhibit particular articles againſt him, and make good the "ſame *."

13. On the 11th of December, 1746, Sir William Yonge brought up a meſſage to the Lords, as follows: "My Lords, The Commons "of Great Britain, in Parliament aſſembled, having received infor-

Lords, on the 9th of Auguſt, "That he had "made diligent ſearch and enquiry after the "ſaid Lord Bolingbroke, but that he was not "to be found."—The Lords order a meſſage to be ſent to the Houſe of Commons, to acquaint them with the above-mentioned return of the ſaid Gentleman Uſher.—On the 10th of Auguſt there is a ſimilar proceeding againſt the Duke of Ormond.

* Upon this meſſage, the Lords appoint a Committee to inſpect their Journals, in relation to their proceedings on impeachments for high crimes and miſdemeanors.—They report on the 8th of April, 1725.

"mation

" mation of divers treaſons committed by a Peer of this realm,
" Simon Lord Lovat, have commanded me to impeach the ſaid
" Simon Lord Lovat of High Treaſon.—And I do here, in their
" names, and in the names of all the Commons of Great Britain,
" impeach the ſaid Simon Lord Lovat of High Treaſon.—And I am
" further commanded to acquaint your Lordſhips, that they will,
" with all convenient ſpeed, exhibit articles to make good the
" charge againſt him."

## IV. *Proceedings in either Houſe between the Delivery of the Charge and the Trial.*

1. ON the 29th of June, 1689, when the articles of impeachment for "High Treaſon" againſt Blair, Vaughan, and others, are taken into conſideration by the Lords, they appoint a Committee to inſpect the Journals, as to precedents of impeachments, and the grounds and reaſons of thoſe precedents.—On the 2d of July, the Earl of Rocheſter reports * what precedents the Committee had found in the Journals, and amongſt the records in the Tower.—After conſidering this report, and much debate, the queſtion being put, "Whether this Houſe will proceed upon the "impeachment brought from the Houſe of Commons againſt theſe "perſons?" it was reſolved in the affirmative.—The perſons impeached are then all ordered to be brought to the Bar, in ſafe cuſtody, by the keeper of Newgate, or ſuch of them as are in his cuſtody, on the 4th of July, to hear the articles read.—On the 4th of July, ſome of them are brought; the articles are read; they are allowed copies and counſel; and then are ordered to ſtand committed to Newgate, in order to their trials.—On the 12th of July they put in their anſwers in perſon at the Bar, which are brought to the Commons on the 13th and 23d of July †.

* It ſhould ſeem, as if the Committee, that was appointed, conſidered their ſearch for precedents to be confined to inſtances of impeachments of *Commoners*; becauſe the precedents, which they report, are all caſes of Commoners, except that of Archbiſhop Laud.—See this report in the Appendix to this Volume, N° 10; with the proceedings of the Lords thereupon.

† I do not find that the Commons ever made any replication to theſe anſwers.

2. On

2. On the 31ſt of March, 1690, in a ſubſequent Parliament *, Sir Adam Blair petitions the Lords that he may be bailed.—The conſideration of this petition is referred to the Committee of Privileges.—On the 5th of April, the queſtion being put, "Whether Sir "Adam Blair ſhall be admitted to bail?" it was reſolved † in the affirmative; and ordered, that on Wedneſday next the Houſe will take into conſideration "Whether impeachments continue from "Parliament to Parliament ‡?"

3. On the 6th of October, 1690, the Lords appoint a Committee to inſpect and conſider precedents, "Whether impeachments "continue in *ſtatu quo* from Parliament to Parliament §."—On the

* The parliament in which Sir A. Blair and the others were impeached, had been diſſolved on the 6th of February, 1689.—The next Parliament met on the 20th of March following.

† He is bailed on the 7th of April, and the condition of the recognizance is, "That if "he ſhall appear before the Houſe, at all "times when he ſhall be ſo ordered, then the "recognizance to be void."—On the 8th and 9th of April, ſimilar recognizances are taken from the other perſons impeached.

‡ The conſideration of this queſtion was put off from time to time, and then dropped, and nothing further done upon it in the courſe of this ſeſſion.—In the next ſeſſion, on the 2d and 5th of December, 1690, Blair and the others, upon their petition, are diſcharged from their bail.

§ The ſame queſtion was raiſed, juſt a century after, on the 9th of December, 1790, in the caſe of the impeachment of Warren Haſtings, Eſq; but very few perſons were found, in either Houſe of Parliament, to maintain, "That the act of the Crown in diſſolving the Parliament could, by law, put an end to a criminal proſecution, inſtituted by the Houſe of Commons on the part of the people." Whoever will conſult the report of precedents, made to the Lords from a Committee appointed for that purpoſe (and which was ordered to be printed on the 19th of April, 1791,) and will read the printed debates in both Houſes, on that queſtion, will be convinced, that the arguments, on which the deciſion was founded, "That impeachments do continue *in ſtatu* "*quo* from Parliament to Parliament," and which produced ſo large a majority both in the Lords and Commons, were drawn from what had been the ancient courſe and methods of Parliament in former inſtances of impeachment; and that this practice, in caſes of impeachment, was analogous and conformable to the invariable courſe of precedents in all other judicial proceedings, before the Houſe of Lords, even from the very earlieſt times.—See ſeveral of theſe precedents in the note †, in p. 74 of this volume.—A very judicious and clear argument upon this ſubject was printed in 1791, intitled, "A Review of "the Arguments in favour of the Conti-"nuance of Impeachments notwithſtanding "a Diſſolution," by a Barriſter; ſuppoſed to be written by the Hon. Spencer Percival. The numbers on the diviſion on this queſtion in the Houſe of Commons were 143 to 30; and in the Houſe of Lords 69 to 20.

30th of October, they report ſeveral precedents, concerning impeachments, from the Rolls of Parliament; "and that they had "examined the Journals of this Houſe, which reach from the "12th of Henry VII. and all the precedents of impeachment ſince "that time; among all which none are found to continue from one "Parliament to another, * except the Lords, who were lately ſo "long in the Tower." And they then ſtate the dates of the proceedings againſt Lord Stafford.

4. On the 30th of October, 1690, the Lords, after conſidering the precedents that had been reported from the Committee, appointed to conſider, "Whether impeachments continue *in ſtatu* "*quo* from Parliament to Parliament," diſcharge the Earls of Saliſbury and Peterborough from their bail †.

5. On the 27th of April, 1695, as ſoon as the meſſage was ſent to impeach the Duke of Leeds at the Bar of the Houſe of Lords, a Committee is appointed to withdraw into the Speaker's Chamber, and to prepare articles of impeachment.—On the 29th, this Committee have power to ſend for perſons, papers, and records.—On the ſame day the articles are reported, read a ſecond time, and agreed to; are ingroſſed, read a third time and carried up to the Lords.—On the 30th of April, the Lords ſend down the Duke's anſwer; and the Committee before appointed are ordered to prepare a replication.—On the 1ſt of May the ſame Committee are directed to conſider what is the proper method to compel witneſſes to come in, and give their evidence upon trials of impeachments.—On the 2d of May, the

* This obſervation of the Committee, as it was unneceſſary, ſo it was not accurate—as it appears before, p. 199—that Sir W. Scroggs had been impeached in one Parliament, and that he delivered in his anſwer in a ſubſequent Parliament, with a petition, deſiring a ſpeedy trial, which petition and anſwer are ſent down to the Commons.

† See the proteſt againſt this proceeding—and ſee alſo the petitions of the Lords Saliſbury and Peterborough, preſented to the Houſe of Lords on the 5th of October, and the queſtions put to the Judges on the 6th of October, when the two Lords were ordered to be bailed.

Committee

Committee report, " That the proper method to compel witneſſes " to come in and give their evidence upon impeachments is, in the " firſt place, to iſſue out ſummons from this Houſe to ſuch witneſſes " for their attendance;" and to this reſolution the Houſe agree.—Mr. Robart, a material witneſs, being ordered to attend, but not being to be found, the Commons, on the 3d of May, acquaint the Lords, at a conference, of this circumſtance, and that this hath been the reaſon* why the Commons have not yet acquainted their Lordſhips when they can be ready to make good the impeachment.—The Lords, upon this information, addreſs the King, " That he will be pleaſed to order the ports to be ſtopped, and " iſſue his proclamation for ſecuring the perſon of Mr. Robart."

6. On the 29th of April, 1695, when the articles of impeachment are brought up to the Lords againſt the Duke of Leeds, he is allowed a copy of the articles, and alſo of the reports made by the Joint-Committee of both Houſes, out of which the impeachment aroſe †. The Lords, at the ſame time, appoint a Committee to inſpect the Journals, in relation to proceedings in caſes of impeachments for miſdemeanors.—This Committee reports, on the 30th of April, the precedents of the Earl of Middleſex and Lord Viſcount Mordaunt, as the caſes " which give the beſt account of proceedings upon ſuch " impeachments ‡."

* The Lords, on the 1ſt of May, had ſent a meſſage to the Commons, " That, conceiving " the ſeſſion might not continue much longer, " they thought themſelves obliged in juſtice to " put them in mind of the impeachment brought " up againſt the Duke of Leeds; and to deſire " that the Lords may be acquainted when the " Houſe of Commons can be ready to make " good the articles; to the end, a certain day may " be appointed by the Lords for that purpoſe."

† It appears from the Lords Journal, that the Duke of Leeds, then Preſident of the Council, was preſent in his place in the Houſe of Lords on the 27th of April, the day the impeachment was brought up, and on every other day till the 3d of May, when the Parliament was prorogued.

‡ On the 24th of June, 1701, (two complete Parliaments having intervened) the Houſe of Lords, taking notice, " That the " Commons having impeached Thomas Duke " of Leeds of high crimes and miſdemeanors, " on the 27th of April, 1695; and on the " 29th of April exhibited articles againſt him, " to which he had anſwered; *but the Commons* " *not proſecuting*, order, " That the *ſaid* impeachment, and the articles exhibited againſt him, be diſmiſſed."



7. On

7. On the 20th of April, 1698, as ſoon as the Commons have directed Sir Rowland Gwynn to go to the Lords, and impeach Goudet and others, of divers high crimes and miſdemeanors, they appoint a Committee to prepare the articles of impeachment, and immediately order the ſeveral perſons ſo impeached to be taken into the cuſtody of the Serjeant.

8. On the 26th of April, 1698, Goudet and others, who had been impeached, and taken into cuſtody of the Serjeant, petition to be admitted to bail.—This petition is referred to a Committee to conſider in what manner bail hath been taken in like caſes of miſdemeanor.—They make a report on the 5th of May.—The Houſe then order, That the petitioners be admitted to bail to anſwer the impeachments of this Houſe, and that the Serjeant be empowered to take the ſaid bail *.—The ſureties to be approved by the Houſe.

9. On the 10th of May, 1698, the perſons who had offered themſelves to be bound as ſureties for the appearance of Goudet and others, to anſwer their impeachment, having objected to the too great generality of the condition of the bond, "as being without limitation of time for their appearance, and implying an "obligation for the performance of the judgment which the "Lords may give," and therefore declining to be bound, the Commons order, That when Sir Rowland Gwynn carries up the impeachments to the Lords, he do acquaint the Lords, That the ſaid perſons are in cuſtody of the Serjeant, ready to be delivered to the Gentleman Uſher of the Black Rod, when their Lordſhips ſhall

* See on the 6th, 7th, and 9th of May, the form of their being admitted to bail, with the bail bond, and the approbation of the ſureties.—It has been no uncommon proceeding to admit to bail, perſons in the cuſtody of the Serjeant at Arms. The bail bonds, which were entered into by David Avery and others, copies of which are inſerted in the Journal, 28th of February, 1731, were (as I have heard from Mr. Onſlow) ſettled on great conſideration, by Sir Philip Yorke, then Attorney General.

pleaſe

pleaſe to give order therein.—Sir Rowland Gwynn reports on the 11th of May *.

10. On the 16th of May, 1698, the articles againſt Goudet and others are reported from the Committee appointed to prepare them.—They are read twice and agreed to; and ordered to be ingroſſed.—The Houſe then appoint a Solicitor to prepare inſtructions for managing the impeachments—On the 17th of May, the ingroſſed articles are read, and carried to the Lords.

11. On the 11th of May, 1698, the Lords, upon receiving the impeachments againſt Goudet and others, appoint a Committee to inſpect the Journals, concerning the method of receiving impeachments.—This Committee report, on the 13th of May, ſeveral inſtances.—As ſoon as the articles of impeachment are read, on the 18th of May, the perſons impeached are immediately ordered to be taken into the cuſtody of the Black Rod †; and the Committee before appointed are directed to conſider the further method of proceeding.—They report on the 19th, and the parties are then ordered to be brought up to the Bar.—A copy of the articles is allowed them, and they are admitted to bail ‡, for their perſonal appearance before the Lords in Parliament from day to day until further order of the Houſe.

12. On the 27th of May, 1698, Goudet and others put in their pleas at the Lords.—But, on being brought to the Lords Bar,

* On the 11th of May the Houſe order an impeachment againſt John Pierce, for ſimilar crimes.—See alſo the 27th of May, and the 28th.

† The Lords had, on the 10th of May, when the impeachment was brought up, been informed, "That the perſons were in cuſtody "of the Serjeant at Arms attending the "Houſe of Commons, and ready to be de-"livered to the Gentleman Uſher of the "Black Rod, when the Lords ſhall pleaſe to "give order therein."

‡ See the form of the bail bonds on the 20th and 23d of May.

the next day, the 28th, and ſeverally aſked, Whether they inſiſted on their plea ſo put in, or would plead, Not Guilty? they deſired to withdraw the ſame, and to put in their anſwers.—Theſe anſwers are, on the 28th, communicated by meſſage to the Commons.—On the 30th of May, the anſwers are read by the Commons, and referred to the Committee to prepare replications to them.—The Committee report the replications on the 31ſt.—Theſe are ordered to be ingroſſed, and are carried up to the Lords on the 1ſt of June, by Sir Rowland Gwynn, who is ordered to carry back the original anſwers.

13. On the 3d of June, 1698, the Lords appoint the trial of Goudet and the others, at the Bar of their Houſe, on the 9th of June.—This meſſage is delivered to the Commons on the 4th of June; who immediately order, That Mr. Speaker do iſſue his warrant for all witneſſes to attend to make good the impeachment; and then they appoint a Committee to manage the trial;—who are to inſtruct themſelves in the evidence, and take their parts for managing the trial upon the ſaid impeachments.

14. On the 6th of June, 1698, the Commons ſend a meſſage to the Lords, to deſire, That a convenient place may be appointed for the Managers, "as is uſual *."

15. On

* Theſe latter words were objected to by the Lords, on the 8th of June, as not warranted by precedents—"For that the Committee of Managers have, on ſimilar occaſions, come to the Bar, without proviſion being made for them."—This meſſage brought on ſeveral Conferences, on the 15th, 16th, and 17th of June, and a Free Conference on the 23d.—The arguments, uſed on this occaſion by the Lords, were drawn principally from what had been "the uſual practice." They ſay, "The reaſonableneſs of what is deſired by the Commons, has been never conſidered by us; for the Lords were bound to conſider nothing, but what was uſual—Matters of form are eſſential to government, and 'tis of conſequence to be in the right.—All the reaſon for forms, is cuſtom; and the law of forms, is practice; and reaſon is quite out of doors.—Some particular cuſtoms may not be grounded upon reaſon, and no good account can be given of them; and yet many

15. On the 8th of June, 1698, the Commons ſend a meſſage to the Lords, That, " by reaſon of extraordinary buſineſs," the Commons cannot be ready to-morrow to proſecute the impeachments againſt Goudet and others; and to deſire, That their Lordſhips will appoint ſome other day for the ſaid trial.—The Lords, upon receiving the meſſage, immediately appoint a future day.

16. On the 6th of June, 1698, the Earl of Stamford reports in the Lords, from the Committee appointed to ſearch precedents touching the allowing counſel to perſons impeached, which report is in the Commons Journal of the 8th of June.—On reading this report, the Lords aſſign counſel, on their petition, to the impeached parties.

17. On the 28th of June, 1698, Goudet and others, petition the Lords for leave to withdraw their anſwers.—They are ſeverally brought to the Bar, where they ſeverally relinquiſh their pleas and anſwers, and plead Guilty.—They are then ordered to be taken into cuſtody of the Gentleman Uſher of the Black Rod (being at that time in cuſtody of their bail)—The Lords deſire a Conference, upon the ſubject-matter of the impeachments; and at that Conference, which is held immediately, the Lords acquaint the Commons, that the perſons impeached have confeſſed themſelves guilty, which confeſſion their Lordſhips have recorded, and have ordered them into cuſtody.—The Lords then direct their Committee to

" many nations are zealous for them; and " Engliſhmen are as zealous as any others " to purſue their old forms and methods."—The Commons then reſolve to be preſent as a Committee of the whole Houſe; upon which the Lords, on the 24th, addreſs the King to give orders for a place to be prepared in Weſtminſter Hall for the trial.—See the ſubſtance of what paſſed at theſe Conferences in the Appendix, N° 11. However, at a ſubſequent period, at the trial of the Earl of Macclesfield, in 1725, which was at the Bar of the Houſe of Lords, the Lords ſent word to the Commons, on the 26th of April, " That they will order " conveniencies to be prepared there for the " Managers of the ſaid impeachment."

ſearch precedents, for what judgments have been given upon impeachments of high crimes and miſdemeanors.—They report on the 29th *.—The Lords then direct a Committee to inform themſelves of the particular value of the eſtates of the ſaid perſons who have pleaded guilty;—who report on the 2d of July.—And then the Lords reſolve themſelves into a Committee of the whole Houſe, in which they reſolve upon what fines ſhall be ſet, and what puniſhment ſhall be inflicted on the parties; and to theſe reſolutions the Houſe agree.

18. On the 5th of May, 1701, the Lords ſend a meſſage to the Commons, to put them in mind of the impeachments ſent up on the 1ſt and 15th of April, againſt the Earl of Portland, Lord Somers, the Earl of Orford, and Lord Halifax; "and that as yet "no particular articles had been exhibited againſt the ſaid Lords; "—which, after impeachments have been ſo long depending, is "due in juſtice to the perſons concerned, and agreeable to the "methods of Parliament in ſuch caſes."—The Commons return for anſwer, That the articles are preparing and will be ſent up to the Lords in a ſhort time.—See further, on the 15th and 21ſt of May, ſimilar meſſages from the Lords to the ſame purport.

19. On the 8th of May, 1701, Sir Bartholomew Shower reports the articles of impeachment againſt the Earl of Orford.—On the 16th of May, Mr. Harcourt reports the articles againſt Lord Somers—which, when ingroſſed, are amended on the 19th of May;—and when theſe articles are ordered to be carried up to the Lords, on the 9th and 19th of May, the perſon carrying them is directed to pray and demand, "That the Earl of Orford, and "Lord Somers, do give ſufficient ſecurity to abide the judgment

* The Earl of Stamford reports four caſes—Sir Giles Mompeſſon's—Lord Chancellor Bacon's—Sir Francis Michell's—Lord Treaſurer Middleſex's.

"of

" of the Houſe of Lords."—The Lords, on the 9th of May, refer the firſt of theſe meſſages to a Committee; who report, " That " they had inſpected their Journals, and do not find any mention " of the Commons reading the articles at the Bar; and as for " giving ſecurity they find none." And a meſſage to the purport of the latter part of this reſolution is ordered to be ſent to the Houſe of Commons *.

20. On the 8th of May, 1701, after reading the articles of impeachment againſt the Earl of Orford, when they are ordered to be ingroſſed, the Houſe of Commons reſolve, " That ſuch witneſſes as " are neceſſary to be made uſe of, in relation to the ſaid impeach- " ment, have the protection of this Houſe, during their attendance " upon that ſervice."

21. On the 14th of May, 1701, the Earl of Orford delivers in to the Lords his anſwer to the articles of impeachment, which is immediately ordered to be copied, in order to be ſent to the Commons †.—A copy of this anſwer is accordingly ſent on the 15th.—The Lords, as ſoon as the anſwer is delivered in, aſſign counſel to Lord Orford, at his requeſt.

22. On the 21ſt of May, 1701, the Lords ſend a meſſage to the Commons, that they, having been deſired by the Earl of Orford, that a day may be appointed for his ſpeedy trial, and finding no iſſue

* It does not appear, from the Commons Journal, that this meſſage was ever delivered; which may account for the Commons repeating, on the 19th of May, their deſire, That Lord Somers may give ſecurity.—So on the 12th of June, when the ingroſſed articles are ſent up againſt Lord Halifax, the meſſenger is directed to pray and demand, " That his " Lordſhip may give ſufficient ſecurity to " abide the judgment of the Houſe of " Lords."

† This is ſo expreſſed in the Lords Journal; but in the Commons Journal of the 15th of May, the meſſage by the Maſters in Chancery is thus entered.—" We are commanded by " the Lords to deliver to this Houſe, the " anſwer of Edward Earl of Orford."—On the 24th of May, the meſſengers bring down " a copy of Lord Somers's anſwer." See the former proceedings, p. 257, N° 12, in the caſe of Goudet, and others.

joined

joined by replication of this Houſe, think fit to give notice thereof to this Houſe.—On the 23d, the replication is reported, and ordered to be ingroſſed.—It is read again on the 27th of May, but not ſent to the Lords, for the reaſons given by meſſage to the Lords on the 31ſt, "That the Commons think it moſt proper to begin with the "trial of the Lord Somers."

23. On the 23d of May, 1701, Sir Bartholomew Shower, from the Committee appointed to draw up articles of impeachment againſt Lord Orford, Lord Somers, Lord Portland, and Lord Halifax, reports, That they had directed him to move for power to ſend for perſons, papers, and records, that ſhall be thought neceſſary to be uſed at the trial of the Earl of Orford; and to proceed, in the moſt ſpeedy and ſecret way they can, for the advantage of the proſecution; which is agreed to by the Houſe accordingly.

24. The Lords having, on the 21ſt of May, 1701, put the Commons in mind that they had ſent up no replication to the anſwer of the Earl of Orford, nor particular articles againſt the other impeached Lords, "which, after impeachments have ſo long depend-"ed, is a hardſhip to the perſons concerned, and not agreeable to "the uſual methods and proceedings of Parliament in ſuch caſes." —The Commons ſend word, that they will ſend an anſwer by meſſengers of their own.—On the 23d, they direct the Committee, who were appointed to prepare the articles, to conſider of theſe meſſages from the Lords, and to inſpect the precedents of former meſſages, and to report the ſame to the Houſe.—On the 31ſt of May, Mr. Bromley reports the following anſwer to the Lords, which is agreed to by the Houſe: "That as to your Lordſhips other meſſage, "the Commons take it to be without precedent and unparliamen-"tary; they, as proſecutors, having a liberty to exhibit their arti-"cles of impeachment in due time, of which they, who are to pre-"pare them, are the proper judges."—The Lords had, on the preceding

preceding day, the 30th of May, appointed the trial of the Earl of Orford on the 9th of June, and had ſent a meſſage to this effect to the Houſe of Commons.—But this meſſage from the Lords was not delivered to the Commons till after they had come to the reſolution on the 31ſt *.

25. On the 2d of June, 1701, Lord Stamford reports from a Committee, ſeveral precedents of the manner of delivering articles of impeachment by the Commons: and on the 7th of June, he makes a further report of the manner in which the Lords have proceeded on impeachments, between the year 1624 and 1680.

26. On the 16th of June, 1701, the Lords, after a report, made by the Earl Marſhal, of the preliminaries to be obſerved upon the trials of the impeached Lords, come to ſeveral reſolutions, as rules to be obſerved on the trial of Lord Somers; and a meſſage is the ſame day ſent to the Commons, to communicate to them the notes and rules which the Lords intend to obſerve on that occaſion.

27. On the 14th of December, 1709, the Committee, who are appointed to draw up articles of impeachment againſt Dr. Sacheverel, have power to ſend for perſons, papers, and records, and to ſit *de die in diem*.

28. On the 15th of December, 1709, as ſoon as the Lords receive the impeachment at their Bar againſt Dr. Sacheverel, and are informed, "That Dr. Sacheverel is in the cuſtody of the Serjeant at "Arms attending the Houſe of Commons, and ready to be delivered "to the Gentleman Uſher, when their Lordſhips ſhall order;" they appoint a Committee to conſider of that impeachment, and what has

* Several meſſages and conferences ariſing upon this ſubject, in which there is much curious Parliamentary learning, the proceedings are put together, and inſerted in the Appendix, N° 12.

been uſual, and what is proper to be done on this occaſion.—They report on the 22d of December.

29. On the 17th of December, 1709, Dr. Sacheverel, in cuſtody of the Serjeant at Arms, petitions the Houſe of Commons to be admitted to bail.—The Houſe order a Committee to ſearch precedents concerning taking bail, in caſes of perſons committed for high crimes and miſdemeanors.—On the 19th, the Committee are empowered to ſearch the Lords Journals for precedents upon this point.—On the 22d of December the Committee make their report of precedents *; and a motion being made, "That Dr. Sacheverel be admitted to bail," it paſſed in the negative.

30. On the 9th of January, 1709, Mr. Dolben, from the Committee appointed to draw up articles of impeachment againſt Dr. Sacheverel, reports the articles.—They are read a ſecond time on the 11th of January, and agreed to article by article; and ordered to be ingroſſed.—On the 12th, the ingroſſed articles are read, and ordered to be carried to the Lords.

31. As ſoon as the articles of impeachment for high crimes and miſdemeanors are brought up to the Lords, on the 12th of January, 1709, they are read; and the Lords then order, "That the Gen-"tleman Uſher of the Black Rod do forthwith take Dr. Sacheverel "into his cuſtody †."

* See, in the Commons Journal of the 22d of December, 1709, this report, extracted from the Journals of both Houſes, of the proceedings of admitting to bail perſons impeached; from the inſtance of Sir Giles Mompeſſon, in 1621, to the late caſe of Goudet and others.

† The Lords had been acquainted from the Commons, on the 15th of December, when the impeachment was delivered at their Bar, That Doctor Sacheverel was in cuſtody of the Serjeant at Arms, ready to be delivered to the Black Rod, when the Lords ſhould order it.—On the 13th of January, the Serjeant acquaints the Commons, that he had delivered him to the Black Rod, and taken a diſcharge for him on the back of the Lords order.—The order and diſcharge are entered in the Journal.

32. On the 12th of January, 1709, as ſoon as the Lords are informed, that Dr. Sacheverel is taken into the cuſtody of the Black Rod, he is ordered to be brought to the Bar, where the articles are read to him.—He deſires a copy of the articles—time to anſwer them—Counſel to aſſiſt him—and that he may be bailed.—The three firſt are allowed him immediately; and, on the next day, the 13th, upon his petition, ſtating, That he has been a month in cuſtody, to the prejudice of his health, the Lords reſolve to admit him to bail; and order a Committee to conſider of the ſufficiency of the bail * offered by him.

33. On the 25th of January, 1709, Dr. Sacheverel delivers in his anſwer at the Bar of the Houſe of Lords; which is read, and ſent to the Commons, with a deſire, "that the ſaid original anſwer "may be returned with all convenient ſpeed."—It is read in the Houſe of Commons on the 26th, and referred to the Committee who were appointed to draw up the articles of impeachment, to conſider of, and to report their opinion, what is moſt proper to be done towards the further proceeding thereon.—On the 2d of February, the Committee report, That they have prepared a replication; which is read twice, and agreed to, and ordered to be ingroſſed †.—On the 3d, it is again read, and ſent to the Lords, together with the original anſwer.—As ſoon as the Lords receive the replication, they appoint the time for the trial, at the Bar of the Houſe of Lords; and direct a meſſage to be ſent to the Commons to acquaint them with this, and that the Lords will order conveniencies to be prepared there for the Managers of the impeachment.

* On the 14th of January the bail are approved of by the Houſe; and they are called in, and enter into ſeveral recognizances; the form of which ſee in the Lords Journals.—On the 17th, the Lords allow ſeveral perſons to be his Counſel; and further time; on his petition.

† The replication, amongſt other matters, ſtates "That there are many things in this "anſwer, not warranted by the courſe of "proceedings upon impeachments; foreign "to the charge of the Commons; unbecoming a perſon impeached; and plainly deſigned to reflect upon the honour of the "Houſe of Commons; for which they might "demand immediate juſtice."

34. On the 4th of February, 1709, as ſoon as the Houſe of Commons receive the meſſage from the Lords, acquainting them of the time fixed for the trial of Dr. Sacheverel, at the Bar of the Houſe of Lords, they appoint Managers to make good the impeachment.—They then reſolve, "That this Houſe will be preſent at the "trial, as a Committee of the whole Houſe;" which meſſage they ſend to the Lords; and deſire, "That a convenient accommoda-"tion may be prepared for them."—On the receipt of this meſſage from the Commons, on the 6th of February, the Lords immediately addreſs the Queen, to give orders for preparing Weſtminſter Hall.

35. On the 10th of February, 1709, the Commons add Mr. Walpole, General Stanhope, and ſeveral other perſons, to the Managers—give them power to ſend for perſons, papers, and records—and appoint a Solicitor to the Managers, for proſecuting the impeachment.

36. On the 13th of February, 1709, Dr. Sacheverel petitions the Lords, to acquaint them, that ſome of the Counſel allowed to aſſiſt him had returned their fees, and refuſed to aſſiſt him; and therefore praying, that the Lords would aſſign other Counſel, and alſo a Solicitor; to which the Lords agree.

37. On the 18th of February, 1709, the Lords appoint a Committee to conſider of tickets to be allowed to each Lord; and, on the 23d, make ſeveral regulations, touching this and other matters reſpecting the trial.—On the 24th of February, the Commons make their orders, relating to their attendance in the places prepared for them; and direct, "That nothing that ſhall be ſaid at the trial, by "any Member of this Houſe, or by any perſon produced by the "Commons as a witneſs, ſhall be printed or publiſhed without leave "of the Houſe."

38. On

38. On the 25th of February, 1709, a meſſage is ſent to the Lords from the Commons, with the names of ſuch witneſſes as are to be examined to make out the impeachment; and to deſire that the Lords will make forth ſummons for their attendance.—The Commons alſo make their orders *, touching the manner of the attendance of the Managers and Members.—See alſo the Lords Journal of the 25th of February, for the ceremonies to be obſerved at the trial.

39. On the 12th of July, 1715, Lord Oxford is committed to the Tower, on the 11th and 12th articles of impeachment, containing an accuſation of High Treaſon; but before he withdraws from the Lords Bar, he deſires a copy of the articles †, and time to anſwer, and Counſel ‡ and a Solicitor to aſſiſt him in his defence; all which requeſts are granted.

40. On

* On the 27th of February, the Commons make an alteration in the order in which the Speaker and Members are to go out of the Houſe to the trial.—In the inſtance of Mr. Haſtings's impeachment, the Houſe of Commons on the 6th of February, 1788, make ſeveral orders reſpecting the form and manner in which the Houſe and the Managers ſhould attend the trial in Weſtminſter Hall. This form was ſimilar to that which was here directed to be obſerved by the order of the 27th of February, 1709; and which was afterwards followed in the caſe of Lord Lovat; and continued to be the form obſerved at Mr. Haſtings's trial, till it became very inconvenient, from a difficulty of procuring the attendance of forty Members, to enable the Speaker to take the chair, in order to call over the names of the Managers to proceed to the trial. This inconveniency, which appeared more particularly on the 28th of February, 1793, induced the Houſe of Commons to change this form, and to adopt the mode that had been uſed at the trial of Lord Strafford, in 1640; and on the 1ſt of March they accordingly reſolve, "That "every day, on which the trial ſhall be pro- "ceeded on, the Houſe ſhall meet as a Com- "mittee in Weſtminſter Hall; and that the "Houſe ſhall on ſuch days ſit at three o'clock "in the afternoon." At the ſame time, they give "leave to the Speaker to take the chair, "for the purpoſe of receiving a meſſage from "the Lords relating to the time of the further "proceeding on the trial, although forty "Members ſhould not be preſent."

† He makes a further requeſt, That, as the Commons had reſerved a power to exhibit further articles, he doubted not but that the Lords would likewiſe allow him a copy of theſe, and time to anſwer.—On the 2d of Auguſt the Commons do exhibit further articles of high crimes and miſdemeanors, a copy of which is ſent to him, and time allowed.—He is ordered to be brought to the Bar, on the 3d of Auguſt, to hear theſe articles read; but this attendance is, the next day, diſpenſed with, on account of his health.

‡ On the 2d of May, 1716, the Lords

40. On the 3d of Auguſt, 1715, Lord Oxford petitioned the Lords that he might have leave to apply for copies of records or other papers that he ſhould think neceſſary for his defence.—This is allowed him; but, on the 8th of Auguſt, he preſented another petition, deſiring the peruſal and copies of ſuch memorials, letters, treaties, or other papers, as were referred by the Houſe of Commons to their Committee of Secrecy, and upon which the articles againſt him were founded; and alſo copies of all treaties, Treaſury warrants, reports, and other papers, mentioned in the report from the Committee of Secrecy.—This petition is referred to a Committee, who are to inſpect precedents of what hath been done in caſes of this nature.—On the 13th of Auguſt, this Committee make a report; and ſome entries out of the Journals being read, the Lords order, "That Lord Oxford have leave to cauſe copies to be "taken of all warrants and other papers in the Treaſury Office, "and of the Journals of Parliament, and of public treaties, referred "to in any of the articles exhibited againſt him, and of all other "records whatſoever."

41. On the 2d of September, 1715, Lord Oxford's anſwer being ready, but he continuing under great pain and indiſpoſition, the Lords, upon his petition, and the examination of his phyſician, Dr. Mead, give leave for his Solicitor to deliver in his anſwer.—On

read 3°, and paſs, a "Bill, for allowing of "Counſel to all perſons who ſhall be pro-"ceeded againſt in Parliament for any crimes "of treaſon or miſpriſion of treaſon."—It is immediately read once in the Houſe of Commons; but the queſtion being put, That it be read a ſecond time, it paſſed in the negative.—The purport of this Bill (which is preſerved in the office belonging to the Houſe of Commons) was to repeal ſo much of the 12th clauſe of the 7th of William III. ch. 3, "An "Act for regulating of trials in caſes of trea-"ſon and miſpriſion of treaſon" (which clauſe provides, "That nothing in that Act "contained ſhould be conſtrued to extend to "any impeachment or other proceedings in "Parliament") as relates to the aſſigning of Counſel to perſons impeached, or proceeded againſt in Parliament.—By a ſubſequent ſtatute of the 20th of George II. ch. 30, it is enacted, "That every perſon who ſhall be impeached "by the Commons of High Treaſon, or of "miſpriſion of treaſon, ſhall be received and "admitted to make his full defence by Coun-"ſel."

the

the 3d of September, the Solicitor delivers the anſwer in, upon oath, to all the articles that had been exhibited by the Commons; which is read; and a Committee appointed to inſpect precedents of the method of proceeding.—The Committee report ſeveral precedents on the 5th of September, and the Lords then order a copy of this anſwer to be ſent down, by meſſage, to the Commons.

42. On the 12th of September, 1715, Lord Oxford's anſwer to the articles of impeachment being read in the Houſe of Commons, it is referred to the Committee appointed to draw up the articles, to prepare a replication.—They report on the 16th of September.—The replication is agreed to, and ordered to be ingroſſed; and, on the 19th of September, the ingroſſed replication is read, and ordered to be carried to the Lords.—Upon reading this replication, on the 20th of September, the Lords immediately addreſs the King, to give directions for preparing a ſcaffold in Weſtminſter Hall, for the trial of Lord Oxford.—This addreſs, and the King's anſwer, is communicated to the Houſe of Commons on the 21ſt.

43. On the 1ſt of September, 1715, Lord Strafford, on the articles of impeachment for high crimes and miſdemeanors againſt him being read, deſires that the papers delivered by him, to either of the Secretaries of State, might be reſtored to him, "without "which it would be impoſſible for him to make his juſt defence." —The Lords, after debate, and reading the petition of Lord Oxford on the 8th of Auguſt, and the order made thereupon, order, "That "Lord Strafford have copies of all Journals of Parliament, of pub-"lic treaties referred to in the ſaid articles, and of all other records "whatſoever; and alſo of all ſuch papers delivered up by the ſaid "Earl, of which there are any copies in the public offices."—On the 9th of January, 1715, Lord Strafford preſents his anſwer, a copy of which is ſent to the Houſe of Commons on the 17th of January. —On the 28th of January, this anſwer is read, and referred to the Committee

Committee of Secrecy to prepare a replication.—The replication is reported on the 12th of June, 1716, and ordered to be carried to the Lords on the 13th.

44. On the 10th of January, 1715, Lord Derwentwater, and the other Scotch Lords impeached for High Treaſon, are brought to the Bar of the Houſe of Lords to hear the articles read.—They are then allowed Counſel * and a Solicitor, and copies of records for their defence, and ſummonſes for their witneſſes †.—The Lord Chancellor is directed to write letters to the abſent Lords, to require their attendance on the ſervice of the Houſe.

45. On the 19th of January, 1715, Lord Derwentwater, and the other impeached Lords, are brought to the Bar of the Houſe of Lords, to deliver in their anſwers to the articles, when ſeveral of them plead guilty ‡.—Their anſwer and pleas are ordered to be recorded, and a meſſage § is ſent to the Commons to acquaint them therewith.—The Lords are remanded to the Tower.

46. On

* On the 11th and 12th of January they name their Counſel and Solicitor.

† It is ordered, that the witneſſes ſummoned by the impeached Lords ſhall have the protection of this Houſe, for their ſafe coming and going, during the time of the ſaid trial.

‡ The Earl of Winton preſents a petition, deſiring further time for delivering in his anſwer, which is allowed him.

§ This proceeding, of acquainting the Commons by meſſage only, is afterwards objected to; and, on the 15th of February, 1715, the Commons reſolve to demand a Conference; in which they acquaint the Lords, "That the "Commons conceive it to be a parliamentary "courſe to be obſerved for the future, that "all writings delivered in to the Houſe of "Lords by perſons impeached by the Com- "mons, at the time when they put in their "anſwers or pleas, or true copies of ſuch "writings, ſhould be forthwith ſent to the "Commons."—This is referred to a Committee, who, on the 20th of February, report, "That, upon inſpecting the Journals of the "Lords, they do not find that ſuch writings "have been communicated to the Commons; "but, that the Committee are of opinion, "that it may be reaſonable (the Commons "having deſired it) that this proceeding "ſhould be obſerved for the future."—To this report the Lords agree; and reſolve, "That, for the future, all writings, delivered "in to the Houſe of Lords by perſons im- "peached by the Commons, at the time when "they put in their anſwers or pleas, or true "copies of ſuch writings, ſhall be forthwith "ſent

46. On the 23d of January, 1715, Lord Winton delivers in his anſwer at the Lords, a copy of which is ordered to be ſent to the Commons.—On the 25th of January, it is read in the Houſe of Commons, and referred to the Committee who were appointed to draw up the articles of impeachment; who are directed, on the 26th, to conſider of a replication *; which they report, and it is carried up to the Lords on the 28th of January †.

47. The Lords having appointed Thurſday the 8th of March for the trial of Lord Winton, the Houſe of Commons, on the 3d of March, order, That the Committee, appointed to draw up the articles, and prepare evidence, be appointed Managers at the trial of the ſaid Earl; and a Solicitor is alſo appointed ‡.

48. The

" ſent to the Commons." This reſolution is communicated to the Commons, at a Conference held on the 7th of March.—See in the former part of this Vol. p. 18, in a note, the reaſon that this Conference was ſo long deferred.

* On the 27th of January, the Houſe of Commons order, " That ſuch Members of the " Committee appointed to prepare the repli- " cation to the anſwer of Lord Winton, as are " Juſtices of the Peace for the County of " Middleſex, be empowered to examine, in " the moſt ſolemn manner, ſuch perſons as " ſhall be judged neceſſary to be produced as " evidence at the trial of the ſaid Earl."—On the 28th of January, Mr. Hampden reports, that he had, at the Bar of the Houſe of Lords, " made the replication," directed by this Houſe, to Lord Winton's anſwer.

† On the 10th of February, the Lords make an order for the attendance of ſeveral perſons, as witneſſes on behalf of Lord Winton, at his trial; and that ſuch perſons ſhall have the protection of the Houſe for their ſafe coming and going, during the time of the ſaid trial.—On the 15th of March, the Commons receive a meſſage from the Lords, to acquaint them, " That, at the requeſt of Lord Winton, " the Lords do deſire, that this Houſe will give " leave to General Carpenter, a Member, to " be examined as a witneſs at his trial;" which leave is granted accordingly.

‡ The trial being deferred to the 15th of March, the Houſe of Commons, on the 14th, reſolve to be preſent as a Committee of the whole Houſe, and that they will proceed to the Court in Weſtminſter Hall, as they did to hearing judgment pronounced againſt the ſix condemned Lords.—See this form on the 7th and 9th of February, 1715.—See alſo the proceeding on the 15th of March; where ſeveral Members refuſed to come out of the places prepared for the Houſe of Commons, and a Committee is appointed to go, with the Serjeant and Clerk, to take their names, which are reported to the Houſe.—On the 13th and 14th of March, the Lords make their addreſſes, and orders for the attendance of guards, and directing the forms of their proceeding.—On the 14th of March, they order,

" That,

48. The Lords * having appointed the day for the trial of Lord Oxford, the Commons, on the 14th of June, 1717, appoint a Committee of Managers † to prepare evidence, and to proceed, in the moſt ſpeedy and ſecret way they can, for the advantage of the proſecution.—On the 24th of June, the Houſe reſolve to be preſent as a Committee of the whole Houſe ‡.

49. On the 18th of March, 1724, Sir George Oxenden, from the Committee appointed to draw up articles of impeachment againſt Lord Macclesfield, reports the articles §; the ſame are read twice, and ſeverally agreed to, and ordered to be ingroſſed, with a ſaving clauſe.—This clauſe is reported on the 19th of March; and on the 20th the ingroſſed articles are read, and carried to the Lords ||.

" That, if any Peer of Great Britain, who " has not a place in Parliament, ſhall be admitted as a witneſs at the trial, a chair be " placed for him near the table in the Court; " and that ſuch Peer ſhall be ſworn by the " Lord High Steward, and deliver his evi- " dence, ſtanding up, there."

* On the 31ſt of May, 1717, the Committee appointed to ſearch precedents, having acquainted the Lords, " That they obſerve, " that the firſt ſtep uſually taken, after the " appointment of a trial upon an impeachment " for High Treaſon, has been to addreſs for " the appointing a Lord High Steward." The Lords immediately addreſs his Majeſty for that purpoſe.—The Lord Chancellor Cowper was accordingly appointed Steward *pro hac vice*. See the Commiſſion, in the State Trials, Vol. VI. p. 102.—It runs in the form ſettled in the inſtance of Lord Stafford, " Ac pro eo quod Proceres & Magnates nobis " humiliter ſupplicaverunt, ut Seneſchallum " Magnæ Britanniæ pro hac vice conſtituere " dignaremur." See before, the note § p. 191.

† They have power to ſend for perſons, papers, and records, and a Solicitor is appointed to attend them.

‡ See the directions given, and form obſerved, in the Managers and the Houſe going, as a Committee, to attend the trial in Weſtminſter Hall.

§ A doubt ſeems to have ariſen, Whether the crimes charged in theſe articles againſt Lord Macclesfield, were not within the Act of general pardon, paſſed four years before? This Act, and the proceedings in the Journals of the 7th and 16th of May, 1713, were read; from which it appeared, that the Houſe, at that time, declined proceeding againſt William Churchill, Eſquire, and Thomas Earl of Wharton, charged with breach of truſt and corruption, becauſe the crimes with which they were charged were committed before the Act of general pardon, paſſed in the 7th year of Queen Anne.

|| When the articles are read in the Houſe of Lords, on the 20th of March, Lord Macclesfield deſires to have a copy of them, and Counſel aſſigned him; which are accordingly ordered.

50. On

50. On the 8th of April, 1725, Lord Macclesfield puts in his anſwer, a copy of which is ordered to be prepared, and ſent by meſſage to the Houſe of Commons *.—On the 9th of April, this anſwer is read in the Houſe of Commons, and is referred to the Committee appointed to draw up the articles of impeachment, "to "conſider of, and report their opinion what is moſt proper to be "done towards the further proceedings thereon."—On the 23d of April, they report a replication, which is ordered to be ingroſſed, and carried to the Lords on the 24th.

51. On the 26th of April, 1725, as ſoon as the Commons receive a meſſage from the Lords, to acquaint them of the day fixed for the trial of Lord Macclesfield, they appoint Managers to make good the impeachment; and, on the 27th name Solicitors to the Managers. —On the ſame day, the Commons appoint a Committee, to ſearch precedents touching the method of proceeding upon trials of impeachment, "at the Bar of the Houſe of Lords."—This Committee make their report on the 5th of May.

52. On the 11th of December, 1746, after the reſolution had paſſed for impeaching Lord Lovat of High Treaſon, and Sir William Yonge had reported, that he had accordingly, purſuant to the commands of the Houſe, impeached him at the Bar of the Houſe of Lords—a Committee † is appointed to draw up articles of impeachment, and prepare evidence.

* This meſſage is in purſuance of a report made from the Committee, appointed on the 13th of February preceding, to inſpect their Journals touching the mode of proceeding upon delivering in an anſwer to articles of impeachment.

† The Houſe of Commons, at the ſame time, came to the following reſolution, "Whereas "the ſaid Peer is already under commitment, "that therefore this Houſe will not deſire the "Lords, that he may be committed to ſafe "cuſtody, as hath been uſual in caſes of this "nature."—On the 12th of December, ſeveral papers are preſented to the Houſe by the King's command, and referred to the Committee; and five are appointed to be the quorum of the Committee.

53. On the 16th of December, 1746, Sir William Yonge reports the articles of impeachment againſt Lord Lovat.—They are read once, and then a ſecond time, paragraph by paragraph; and, upon the queſtion put upon each paragraph, are agreed to by the Houſe, to be the articles of impeachment.—They are ordered to be ingroſſed.—A clauſe is offered, ſaving liberty to the Commons to exhibit any other articles; which is read a ſecond time, and agreed to, and ordered to be ingroſſed.—On the 17th of December the ingroſſed articles are read, and ordered to be carried to the Lords.

54. On the 17th of December, 1746, as ſoon as the articles of impeachment againſt Lord Lovat are read in the Houſe of Lords, the Duke of Newcaſtle acquaints the Houſe, that Lord Lovat is "already" under commitment for High Treaſon in the Tower.—An order is made for bringing him to the Bar on the 18th, to hear the articles read.—He is accordingly brought up on the 18th, and the articles being read to him, and being aſked what he had to offer, a petition from him is preſented and read, praying for a copy of the articles, and for Counſel and a Solicitor to be appointed him *; which are accordingly granted, and ſummons for his witneſſes †.—An order is then made, "That Lord Lovat do ſtand "committed to the Tower of London, to be there ſafely kept, in "order to his trial; and that no perſon ſhall have acceſs to him, "without the ſpecial leave of the Houſe.

* Lord Lovat alſo complains, in his petition, that perſons have taken poſſeſſion of his eſtate, and have orders to levy his rents; on which the Lords order, "That the ſaid Lord "Lovat be permitted to receive the rents and "profits of his eſtate, by his factors or agents, "in like manner as if he was not under an "accuſation of High Treaſon.—And that the "Lord Advocate for Scotland do take the "proper methods to carry this order into exe-"cution."

† The Lord Chancellor is ordered to write to the abſent Lords, requiring their attendance on the 21ſt of January, on occaſion of the proceedings now depending againſt Lord Lovat.

55. On

55. On the 13th of January, 1746, Lord Lovat, being brought to the Bar, delivers in his anſwer; which is read, and a copy of it is ordered to be prepared, and ſent to the Houſe of Commons.—It is brought down on the 14th of January, and read, and referred to the Committee appointed to draw up articles of impeachment and prepare evidence.—And the Committee are ordered to prepare a replication to the ſaid anſwer.—On the 16th, the replication is reported to the Houſe, read a ſecond time and agreed to, and ordered to be carried to the Lords *.

56. On the 22d of January, 1746, the Lords appoint the 23d of February † for the trial of Lord Lovat in Weſtminſter Hall ‡; and ſend a meſſage to this purport to the Houſe of Commons.—Upon receiving this meſſage, the Commons reſolve, "That this "Houſe will be preſent at the trial, as a Committee of the whole "Houſe."—And they then appoint the Committee, who were to draw up the articles, to be the Managers, to make good the articles of impeachment.

57. On the 13th of February, 1746, the Commons appoint a Committee to inſpect the Lords Journals, in relation to their pro-

* The order is, "That Sir William Yonge "do go to the Bar of the Houſe of Lords, "and make a replication to the anſwer of Si-"mon Lord Lovat, to the effect following," &c. &c.—Sir William Yonge reports, "That "he had made the replication directed by "this Houſe."

† The trial is afterwards deferred, at Lord Lovat's requeſt, to the 5th, and then to the 9th of March.

‡ The Lords then appoint a Committee to inſpect their Journals, relating to former caſes of impeachment, and to conſider of the methods of proceeding on this impeachment.—This Committee make their report, on the 2d of February, of all the rules and orders neceſſary to be obſerved at the ſaid trial.—And, in conſequence of this report, the Lords addreſs the King for the appointment of a Lord High Steward, and for guards to attend, "as has been uſual, in caſes of trials."—The Lords order, on the 4th of February, "That "the commiſſion for appointing a Lord High "Steward ſhall be in like form as that for the "trial of Lord Stafford, as entered in the "Journal of the 30th of November, 1680."—On the 10th of February, the Lords make further orders, about places in Weſtminſter Hall, and tickets.

ceedings upon the impeachment of Lord Lovat *.—The Committee of Managers are empowered to examine ſuch perſons, who are in cuſtody, as they ſhall think neceſſary to be examined.—And a Solicitor is appointed to the ſaid Managers, for proſecuting the ſaid impeachment.

58. On the 3d of March, 1746, the Commons direct the forms of their proceeding to Weſtminſter Hall †; and that theſe orders ſhall be obſerved every day, that the Houſe ſhall go, as a Committee of the whole Houſe, to the trial of Lord Lovat.

* This Committee report on the 17th of February; and, amongſt other things, "That "they have examined the commiſſion of the "Lord High Steward, as entered in the Jour- "nal of the Lords; and do find the ſame to be "conformable to what was ſettled and agreed "upon between both Houſes of Parliament, "*in purſuance of the amendment propoſed by the* "*Commons*, as entered in the Commons Jour- "nals of the 15th of May, 1679, and the "29th of November, 1680."—See before the note in p. 191.—The Commons then appoint a Committee to view the court erected in Weſtminſter Hall, and to report what conveniencies and accommodations are made for the Members of the Houſe of Commons.

† An entry is read from the Journal of the 27th of February, 1709, in the caſe of Dr. Sacheverel, as to the time, at which the Speaker is to go; and directions are given by the Houſe, "That this precedent ſhall be ob- "ſerved upon occaſion of the trial of Lord "Lovat."—See before note *, in p. 267.

## V. *Proceedings on the Trial.*

1. ON the 4th of June, 1689, the Houſe of Commons reſolve *, "That it is the opinion of this Houſe, that "a pardon is not pleadable in bar of an impeachment in Parliament."

2. On the 14th of January, 1689, the Lords, on conſidering a report from their Committee of Privileges, made on the 10th of January, reſolve †, after much debate, "That it is the antient "right

* This reſolution had no reference to any trial then pending, but aroſe out of the conſideration of Heads for a Bill of Indemnity.—See before, p. 193, and the note †.

† See, however, a very ſenſible proteſt of Lord Nottingham and others, againſt this reſolution. Indeed it is difficult to underſtand clearly, what is the meaning of the reſolution, and what conſequences it was intended to produce.—If it is ſuppoſed to declare, "That a "Peer indicted for a capital offence can only "be tried in full Parliament," *i. e.* before "the Houſe of Peers, Parliament ſitting;" or, as Mr. Juſtice Foſter properly terms it, "the Court of our Lord the King in Parliament;" this would be, at once to take away and entirely aboliſh, by a reſolution of one Houſe of Parliament, without an act of the Legiſlature, a legal and very antient court of judicature, viz. "The Court of the High "Steward," a court inſtituted by commiſſion from the Crown, in the nature of a commiſſion of Oyer and Terminer; where the High Steward is the ſole judge in points of law and practice, and the Peers, ſummoned by his precept, are triers and merely judges of fact. (See Mr. Juſtice Foſter's caſe of Earl Ferrers, in his Crown Law, p. 138.) This Court has been frequently inſtituted for the trial of Peers, though not indeed ſince the Revolution; and till it ſhall be aboliſhed and taken away by Act of Parliament, it may ſtill, notwithſtanding this reſolution of the Lords, be reſorted to, if the Crown, on any occaſion, be ſo adviſed. The only law that has paſſed on this ſubject is the 7th William III. ch. 3. ſect. 10. which enacts, "That upon the trial of any "Peer, 'for treaſon or miſpriſion of treaſon,' "all the Peers, who have a right to ſit and "vote in Parliament, ſhall be ſummoned; "and every Peer ſo ſummoned and appearing, ſhall vote on the trial." By this Act, the High Steward may perhaps, on trials for treaſon or miſpriſion of treaſon, be compelled to ſummon, as triers in his court, all Peers that have at the time the right to ſit and vote in Parliament. But, with regard to indictments for other capital offences, as no law has paſſed to make any alteration in the form or conſtitution of the High Steward's court, I ſhould ſuppoſe, notwithſtanding this declaratory reſolution of the Lords, the Crown might by law, iſſue the commiſſion exactly in the manner as has formerly been done. It appears

" right of the Peers of England, to be tried, only in full Parlia-
" ment, for any capital offences." And this reſolution is added to the Standing Orders of the Lords.

3. On the 17th of June, 1701, the Lords proceeded on the trial of Lord Somers in Weſtminſter Hall, upon an impeachment from the Commons. The articles are read, and ſeveral queſtions propoſed to the Judges; and the Commons not appearing, nor any Managers on their behalf *, the Lords acquit Lord Somers, and diſmiſs the impeachment †.—And, on the 23d of June, a ſimilar proceeding is had at the trial of the Earl of Orford.

4. On

pears from Mr. Montagu's report of the Free Conference with the Lords in 1691, which is inſerted in the Appendix to this volume, N° 3, that the Commons underſtood this reſolution of the Lords (the ſubſtance of which the Lords had at that time inſerted in a Bill by way of amendment) in the light of taking away the King's power to erect a Lord High Steward's court, in caſes of treaſon and miſpriſion of treaſon. Whether the clauſe before mentioned, in the 7th William III. ch. 3, does take away the power of the Crown to conſtitute a court of Lord High Steward in thoſe particular caſes, or only compels the Lord High Steward to ſummon all Peers, that have a right to vote, as triers, inſtead of a ſelect number, as has always been uſual, muſt be determined when the caſe ſhall ariſe. No ſuch court has been conſtituted ſince the Revolution, ſo the queſtion never has ariſen. This clauſe however does not go near ſo far as the Lords reſolution of the 14th of January, 1689, as nothing is ſaid in the Act about being tried " only in " full Parliament." See the Lords reaſons in the Appendix, N° 3.—At the trial of Lord Delamer in 1685, before Lord Jefferies, in the court of the Lord High Steward, he puts in a plea to the juriſdiction of the court, "That the " Parliament were at that time in being, though " under a prorogation; and that no Peer " ought to be tried for High Treaſon, 'dur-" ing the continuance of a Parliament' except " in the Houſe of Peers, and before the whole " body of the Peers there." See Lord Jefferies's anſwer to this objection, in the State Trials, Vol. IV. N° 137. p. 216. The Standing Order of the Lords, in 1689, does not even make the condition, " If a Parliament ſhall be " in being," but directs generally, " That a " Peer ſhall only be tried in full Parliament, " for any capital offence."

* In the Journal of the 17th of June, there is an entry of the reaſons, which induced the Commons to decline attending at this trial, at this time.—See this entry inſerted in the Appendix to this Volume, N° 12.

† In the State Papers publiſhed by the ſecond Earl of Hardwicke, there are ſeveral letters from King William to Penſionary Heinſius, relating to the Treaty of Partition, for which Lord Somers and the other Lords were impeached. In the introduction to the publication of theſe letters, Lord Hardwicke makes the following obſervation:—" Though the Partition Treaty " (which proceeded originally from Louis " XIVth.) ended unfortunately, and diſpleaſ-" ed all parties, the diſintereſted and upright " intentions of King William in promoting it

" are

4. On the 23d of June, 1701, the Lords reſolve, " That the " Lords who abſented themſelves from the trial of Lord Orford, " and ſhall not make a juſt excuſe for the ſame, are guilty of a great " and wilful neglect of their duty."

5. On the 24th of June, 1701, the Lords diſmiſs the impeachments againſt the Earl of Portland, there being no articles exhibited againſt him *.—They alſo diſmiſs the impeachment againſt Charles Lord Halifax, the Commons having exhibited articles againſt him, to which he had anſwered, and no farther proſecution was had thereupon.—The Lords alſo reſolve, " That, the " Commons having exhibited articles againſt the Duke of Leeds, " on the 29th of April, 1695 †, to which he anſwered, but the " Commons not proſecuting, the ſaid impeachment, and the ar- " ticles exhibited againſt him, ſhall be, and they are hereby diſ- " miſſed."

" are ſufficiently apparent from theſe papers: " Strong ſenſe, and an extenſive view of the " intereſts of Europe, particularly thoſe of " the country he governed, are no leſs diſ- " cernible; and will do honour to the me- " mory of a Prince, who, with all his defects, " deſerves the veneration of every good Eng- " liſhman."—State Papers, Vol. II. p. 333. —That the firſt propoſal for the Treaty of Partition came from the French King is confirmed by L'Abbé Millot, in Les Memoires Politiques et Militaires; " Effectivement le Roi Guillaume, ce grand promoteur de ce qu'on appelloit l'equilibre de l'Europe, cherchoit les moyens d'empecher la reunion des deux monarchies. Mais Louis XIV. ſe pretoit á ſes vues, et lui fit même les premieres propoſitions," Vol. I. p. 288; and alſo by M. de Torci, " Ces circonſtances, jointes au deſir ſincere de maintenir la paix, determinerent le Roi, à propoſer au Roi d'Angleterre, un partage de la monarchie d'Eſpagne:"—Memoires, Vol. I. p. 42.

* On the 26th of February, 1701, the Houſe of Commons reſolve, " That it is the " undoubted right of every ſubject of Eng- " land, under any accuſation, either by im- " peachment or otherwiſe, to be brought to a " ſpeedy trial, in order to be acquitted or con- " demned."

† This was in a Parliament which was diſſolved on the 11th of October, 1695.—Another Parliament had been choſen, and met on the 22d of November, 1695, which was alſo diſſolved on the 7th of July, 1698.—Another Parliament was choſen, which met on the 24th of Auguſt, 1698, and was diſſolved on the 19th of December, 1700.—The following Parliament met on the 6th of February, 1700, in which this impeachment was diſmiſſed.—Two complete Parliaments therefore had intervened, between the time of the delivery of the articles at the Bar of the Lords, and the diſmiſſion of " the ſaid" impeachment by the Lords.

6. On the 25th of February, 1709, the Lords appoint the ſeveral ceremonies to be obſerved at the trial of Dr. Sacheverel, and addreſs the Queen for the guards to attend, "as has been uſual in ſuch "caſes."—On the 27th of February, the Commons direct in what manner the Speaker and Members ſhall go out of the Houſe to Weſtminſter Hall.

7. Dr. Sacheverel's trial begins on the 27th of February, 1709 *.—On the 28th, the Lords adjourn to the Houſe above, where a queſtion being put, "That the Counſel for the priſoner "be permitted to make their defence to the firſt article, before "the Commons proceed on the ſecond,"—it paſſed in the negative.—The Lords then return to Weſtminſter Hall †, and the trial proceeds.

8. On the 1ſt of March, 1709, exception being taken at ſome expreſſions uſed in Weſtminſter Hall, by Mr. Dolben, (one of the Managers at the trial of Dr. Sacheverel) the Lords adjourn to the Houſe above; when the Lord Chancellor is directed to call on Mr. Dolben to explain his meaning in thoſe expreſſions; which, on their return to Weſtminſter Hall, Mr. Dolben accordingly does ‡.

9. On the 2d of March, 1709, during the trial of Dr. Sacheverel, the Houſe of Commons being informed that there were ſeveral

* See this trial as publiſhed in the State Trials, Vol. V. p. 645.

† It appears from the Lords Journal, that, during the adjournment of the Lords to the Houſe above, for the purpoſe of determining this queſtion, the Managers continued in the Hall, and the priſoner remained at the Bar.—So on the 1ſt of March.

‡ On the 27th of April, 1789, Mr. Haſtings prefers a petition to the Houſe of Commons, complaining of ſome words uſed by Mr. Burke, one of the Managers, at the trial of the impeachment in Weſtminſter Hall, in which Mr. Burke had accuſed him "of having murthered "Nundcomar, by the hands of Sir Elijah "Impey," and deſires redreſs.—On the 1ſt of May this petition is taken into conſideration, and a Committee is appointed to inſpect precedents relating to ſuch complaints.—The Committee reports on the 4th of May; and the Houſe reſolve, "That the words ſpoken by "Mr. Burke, ought not to have been "ſpoken."

Members

Members in Weſtminſter Hall, before the managers went, they order ſeveral Members to go with the Serjeant and Clerk into thoſe places, to take the names of ſuch Members as ſhall refuſe to return. —See alſo the 3d of March.

10. On the 3d of March, 1709, the Managers for the impeachment of Dr. Sacheverel deſiring leave, at the trial, to confer together, ſaying, "That they would ſoon return"—the Lords, in the interim, adjourn to the Houſe above, and afterwards return to Weſtminſter Hall; when the Managers acquaint the Lords with their reaſons for withdrawing.—So on the 6th of March.

11. On the 7th of March, 1709, when Dr. Sacheverel's Counſel had finiſhed his defence, Dr. Sacheverel deſired that he might be heard after the Managers ſhould have replied; which being objected to by the Managers, the Lords told him, "That if "he had any thing to ſay he muſt now ſpeak."—He is accordingly heard; and on the 9th of March the Managers for the Commons reply.

12. On the 10th of March, 1709, after the reply of the Commons, at the trial of Dr. Sacheverel, the Houſe of Lords being moved, in Weſtminſter Hall, "That a queſtion might be aſked of "the Judges," the Lords adjourn to the Houſe above; and a motion being made there, "That the queſtion might be propoſed in "the Court below," after debate, and reading ſome proceedings in the caſe of Lord Viſcount Stafford, is was agreed *, "That the "ſame ſhould be 'propoſed' below."—The Lords being then adjourned "

* Upon this queſtion, of the expediency of the Judges delivering their opinion in public, in the preſence of the Managers of the proſecution and of the perſon accuſed, ſee much information ſtated in a report made to the Houſe of Commons on the 30th of April, 1794, from a Committee appointed to inſpect the Lords Journals, in relation to their proceedings on the trial of Warren Haſtings, Eſq.—under the head "Publicity of the Judges opinions," p. 9, in the printed report—Almoſt from the commencement of the trial of the impeachment of Mr. Haſtings, the queſtions that were referred to the Judges on points of evidence, &c. (which were

journed to Weſtminſter Hall, the queſtion was 'propoſed;' and, after a ſecond adjournment to the Houſe above, it was agreed, "That the "queſtion ſhould be 'put' to the Judges in the Court below;" which was accordingly done; and the Judges having given their anſwer in Weſtminſter Hall, the Lords again adjourned to the Houſe above, when the Lord Chancellor declares what the opinion of the Judges was upon that queſtion.

13. The queſtion put to the Judges * in Weſtminſter Hall, on the 10th of March, 1709, at the trial of Dr. Sacheverel, was, "Whether by the law of England, and conſtant practice, in all "proſecutions, by indictment or information, for crimes or miſ-"demeanors, in writing or ſpeaking, the particular words ſup-"poſed to be criminal muſt not be expreſsly ſpecified in ſuch "indictment or information?" to which the Judges all anſwered in the affirmative †.—On the 11th of March the Lords reſolve, "That they will proceed to the determination of the impeach-"ment according to the law of the land, and 'the law and "uſage

were very numerous, as the Lords referred to the Judges almoſt every queſtion that aroſe) were "propoſed and put" to them, not only not in Weſtminſter Hall, in the preſence of the parties, but in the Houſe of Lords, "with their doors ſhut;" and the anſwers of the Judges were delivered "in the ſame ſecret manner."—The objections to this mode of proceeding, "as well with regard to its novelty "in point of precedent, as to its being a viola-"tion of the firſt principles of Juſtice," are very ably ſtated in a proteſt ſigned by three Lords on the 29th of June, 1789.—See in the before mentioned report of the 30th of April, 1794, the title "Mode of putting the Queſtions."—Indeed the whole report is moſt ably drawn; and contains a great deal of information on the law and practice of Parliament on the ſubject of impeachments. At the trial of the Earl of Warwick in 1699, before the Houſe of Peers, for murther, on a queſtion of law being to be put to the Judges, it is taken for granted, that the opinion of the Judges muſt be taken in the preſence of the priſoner; Lord Somers, Lord High Steward ſays, "It muſt certainly be in "the preſence of the priſoner, if you aſk the "Judges opinion." State Trials, Vol. V. p. 169.

* The Judges had been ordered to attend the Houſe of Lords till the trial was over, and all debates thereupon; but on the 14th of March, the Lords being informed, "That, "notwithſtanding her Majeſty's proclamation "for altering the times of the aſſizes, there "will be a delay of juſtice if ſome of the "Judges do not begin their circuit," the Lords gave leave to three of the Judges to proceed on their circuit.

† This opinion of the Judges, "That "the particular words ſuppoſed to be crimi-"nal,

" uſage of Parliament;' " and direct the Clerks, and on the 13th appoint a Committee, to ſearch precedents upon this ſubject. —On the 14th of March the precedents are reported; and the Lords reſolve, " That by the law and uſage of Parliament, in " proſecutions by impeachment for high crimes and miſdemea- " nors, by writing or ſpeaking, the particular words ſuppoſed to " be criminal are not neceſſary to be expreſsly ſpecified in ſuch im- " peachment *."

14. On the 16th and 17th of March, 1709, the Lords, on ſeparate queſtions †, reſolve, " That the Commons have made good " the ſeveral articles againſt Dr. Sacheverel; and it was then propoſed, " That, the Commons having made good the ſeveral articles " againſt Dr. Sacheverel, the ſaid Doctor is guilty of high crimes " and miſdemeanors." But, on the 18th, this queſtion is amended, and the queſtion agreed to be put in Weſtminſter Hall is, " Is " Doctor Sacheverel guilty of high crimes and miſdemeanors, " charged on him by the impeachment of the Houſe of Com- " mons;" and that the anſwer ſhall be " Guilty, or Not guilty, " only ‡."

" nal, ought to be expreſsly ſpecified in every " indictment or information," has been ſince much controverted.—In Layer's trial in 1722, Mr. Juſtice Eyre denies that opinion to be law; and cites ſeveral caſes, where the practice had been otherwiſe—and Lord Chief Juſtice Pratt ſays, " As to what you ſay, That the " words muſt be ſet forth, it is perfectly " wrong; a man may ſet forth the ſubſtance " of the words, without ſhewing the words " themſelves; that is the proper way to be " taken; and, when it is otherwiſe, it is not " ſo, as it ought to be done."

*State Trials, Vol.* VI. *p.* 331.

* See the proteſt of ſeveral Lords againſt this determination.—The Lord Chancellor Cowper, in pronouncing judgment on Dr. Sacheverel, taking notice of this opinion of the Judges, and of the reſolution of the Lords, of the 14th of March, ſays, " So that, in " their Lordſhips opinion (the law and " uſage of the High Court of Parliament " being a part of the law of the land," and that " uſage not requiring the words ſhould be ex- " actly ſpecified in impeachments) the anſwer " of the Judges, which related only to the " courſe in informations and indictments, " does not affect your caſe."

*Lords Journal, 23d of March* 1709.

† Theſe queſtions are put and determined in the Houſe of Lords; but the queſtion of Guilty or Not guilty is put in the court in Weſtminſter Hall.

‡ See the proteſt upon this occaſion.

15. On the 20th of March, 1709, the Managers of the Commons being preſent in Weſtminſter Hall, but Dr. Sacheverel not at the Bar, the Lord Chancellor put the queſtion ſeverally to the Lords, "Whether Dr. Sacheverel is guilty of the high crimes and miſde-"meanors charged upon him?" and the Lords having ſeverally declared, "Guilty," or "Not guilty," the Lord Chancellor, having caſt up the votes, declared him "Guilty."—Dr. Sacheverel is then ordered to the Bar, and the Lord Chancellor informed him, "That the Lords had found him Guilty."

16. Dr. Sacheverel, after having been found guilty, deſired, on the 20th of March, 1709, that his Counſel might be heard to two points in matter of law *.—The Lords taking notice of this requeſt, and conſidering the Act of Union, come to no reſolution upon it, but proceed, on the 21ſt, to declare what cenſure to paſs upon him; which being ſettled, the Lords, on the 22d of March, ſend a meſſage to the Commons, "That they are ready to give judgment "in the caſe of Dr. Sacheverel, if they, with their Speaker, will "come and demand the ſame."

17. On the 15th of March, 1715, the Lords proceed, in Weſtminſter Hall, to the trial of the Earl of Winton †, impeached of High Treaſon ‡.—On the 16th the Lord Winton making no material defence, the Commons reply.—The Lords adjourn to the Houſe above, where §, the Biſhop of Wincheſter having delivered

* One of theſe is, That the impeachment is by the Knights, Citizens, and Burgeſſes, "Commiſſioners of Shires and Boroughs," in the name of themſelves, and of all the Commons of Great Britain—but that the articles are only by the Knights, Citizens, and Burgeſſes—"which is neither agreeable to the "impeachment, nor to the title of the Houſe "of Commons ſince the happy Union."

† See this trial, and the proceedings againſt the Earl of Derwentwater, in the State Trials, Vol. VI. p. 1 and 17.

‡ In the courſe of the trial, on the 15th, the Lord Foreſter, a Peer of Great Britain, being produced as a witneſs, his Lordſhip, purſuant to an order of the Lords on the preceding day, came to the table, where a chair is placed for him.

§ It does not appear that, during this adjournment of the Lords from Weſtminſter Hall to the Houſe above, the Managers for the Commons returned to the Houſe, or that the Speaker reſumed the chair.

in

in a proteſtation for himſelf and the reſt of the Biſhops *, the Lords again adjourn to Weſtminſter Hall, and the Lord High Steward demands the judgment of the Lords ſeverally upon the Earl of Winton.—He is unanimouſly found guilty, and, being brought to the Bar, the Lord High Steward acquaints him therewith.

18. On the 27th of May, 1717, the Lords acquaint the Commons, by meſſage, that their Lordſhips had appointed † the 13th of June for the trial of Lord Oxford ‡.

19. On

* It appears from the Lords Journals of the 15th and 16th of March, that ſeveral Biſhops were preſent, in the Houſe of Lords, on both the days of the trial; and that they did not aſk leave to withdraw, till juſt before the Lords were about to be called upon to give their opinion of Guilty or Not guilty.—See before the note *, p. 189.

† The laſt proceeding that had been had before upon this impeachment was as long ago as on the 20th of September, 1715, when the replication of the Commons to Lord Oxford's anſwer is carried to the Lords, and the Lords addreſs the King to give directions for preparing Weſtminſter Hall for the trial.—An intermiſſion of twenty months.—Lord Oxford petitions, on the 22d of May, 1717, complaining of this hardſhip, and that he had been a priſoner ever ſince the 9th of July, 1715 (a prorogation intervening.)—This petition is referred to a Committee, who, on the 25th of May, in purſuance of an inſtruction given them "to ſearch, in the firſt place, for ſuch pre-" cedents as relate to the continuance of im-" peachments from ſeſſion to ſeſſion, and from " Parliament to Parliament," make a report of theſe precedents.—A motion is then made, "That it is the opinion of the Houſe, that " the ſaid impeachment is determined by the " intervening prorogation;" which is reſolved in the negative.—See the proteſt upon this occaſion; in which, amongſt other reaſons, the proteſting Lords ſay, "By the *ſtatute* of " the 4th of Edward III. no Commoner can " be impeached for any capital crime." There is no ſuch *ſtatute* or Act of Parliament; they muſt therefore allude to the entry on the Rolls of Parliament, 4th Edward III. N° 2 and 6, cited before in the note in p. 54, of this Volume.—Sir Matthew Hale, in the "Juriſdiction of the Houſe of Lords," ch. 16. p. 92, ſays, "Some have thought this declaration of " the 4th of Edward III. being done thus ſo-" lemnly, *in pleno Parliamento*, was a ſtatute " or Act of Parliament.—But that ſeems not " not ſo clear.—It was certainly as ſolemn a " declaration by the Lords as could be made, " leſs than an Act of Parliament; and is as " high an evidence againſt the juriſdiction of " the Lords, to try or judge a Commoner, in " a criminal cauſe, as can poſſibly be thought " of: (1.) Becauſe done by way of declara-" tion, to be againſt law; and, (2.) Becauſe " it is a declaration by the Lords in diſaffirm-" ance of their own juriſdiction; which com-" monly Judges chuſe rather to amplify, if it " may be, than to abridge."—But ſee the ſeveral references in this volume, to the proceedings of both Houſes, on the impeachment of Blair, Vaughan, and others, for High Treaſon, in 1689; and alſo the caſe of Fitzharris, p. 200, with the note.

‡ On receiving this meſſage, the Commons, on the 30th of May, appoint a Committee

19. On the 7th of June, 1717, the Lords come to ſeveral reſolutions as to the mode of proceeding at the trial of Lord Oxford *.

20. On the 24th of June, 1717, the trial of Lord Oxford came on †.—The Commons, after opening the charge generally, were proceeding to make good the firſt article of impeachment, which was a charge of high crimes and miſdemeanors, when the Lords adjourned to the chamber of Parliament ‡, and there reſolved, "That the Commons be not admitted to proceed to make good the articles for "high

mittee to conſider the ſtate of the impeachment; who report, on the 12th of June, "That, on account of the interruption for ſo "many months, it will be neceſſary to review the evidence, and therefore impoſſible "to be ready at the time appointed by the "Lords."—A meſſage is ſent to the Lords to this purport, and to deſire the trial may be put off to a further day; to which the Lords agree.

* One of theſe reſolutions, as reported from the Committee appointed to conſider of the precedents, was, "That the Counſel aſſigned "to the Lord Oxford may be preſent when "he is at the Bar, in order to be heard touching any point or matter of law, if any ſuch "ſhall ariſe upon the two articles of impeachment for High Treaſon; but that the ſaid "Earl may be allowed to make his full defence by Counſel, upon the articles for high "crimes and miſdemeanors, as well to matter "of fact, as to any point or matter of law "which may ariſe thereupon."—The Earl of Clarendon acquainted the Houſe, "That ſome "doubts ariſing in the Committee, by reaſon "of the Act of the 7th of William III. for "regulating trials in caſes of treaſon, and the "ſtanding order of the Houſe of the 28th of "May, 1624, touching judicature and the "allowance of Counſel in caſes of moment; "he was directed by the Committee to inform "the Houſe thereof, as a matter worthy of "their Lordſhips particular conſideration."—Then the preamble of the ſaid Act, and the ſaid ſtanding order, being read, it was propoſed, as an amendment to this reſolution, to leave out "to be heard touching any point or "matter of law, if any ſuch ſhall ariſe upon "the two articles of impeachment for High "Treaſon; but;" and, upon queſtion agreed, "that theſe words ſhould ſtand part of the reſolution."—See before, p. 263.

† See the ſpeech of the Lord High Steward, in which he informs Lord Oxford of the directions the Lords had given, touching his Counſel being preſent, and that his witneſſes are to be heard on oath, as well on the articles of High Treaſon, as thoſe for high crimes and miſdemeanors. The proceedings on this trial are printed in the 6th volume of the State Trials, p. 102.

‡ When the Lords adjourned to the chamber of Parliament, it appears that the Managers withdrew, and the Speaker reſumed the chair in the Houſe of Commons, and the Houſe continued doing buſineſs till they received a meſſage from the Lords, "That their "Lordſhips are now about going down into "Weſtminſter

" high crimes and misdemeanors, till judgment be first given on " the articles for High Treason."—This resolution is communicated to the Managers on their return to Westminster Hall *.

21. Whilst the dispute is depending between the two Houses touching the mode of proceeding on the articles against Lord Oxford, the Lords, after having refused a Free Conference, appointed the trial to proceed on the 1st of July, 1717; but the Lords having waited some time in Westminster Hall, and the Commons not appearing in order to make good their impeachment, the Lords resolve †, " That Robert Earl of Oxford be " acquitted of the articles of High Treason, and other high crimes " and misdemeanors; and that the said impeachment shall be, and " is hereby dismissed ‡."

22. On

" Westminster Hall."—The House of Commons then again resolved itself into a Committee, for the purpose of going to Westminster Hall.

* Upon this resolution of the Lords, the Managers objected, and insisted upon the right of the Commons to proceed in their own method in maintenance of the articles exhibited by them.—The Commons, on the 25th of June, appoint a Committee to search precedents; who report, on the 27th.—The substance of this they resolve to communicate to the Lords at a Conference.—What passed at these Conferences, which were held on the 27th and 28th of June, is inserted in the Appendix to this Volume, N° 13.—The Commons, on the 29th of June, desire a Free Conference; to which, on the 1st of July, the Lords answer by message, " That the subject- " matter of the last Conference being con- " cerning a point of judicature, determined " by their Lordships, after the trial began, " their Lordships do not think fit to give a " Free Conference on the subject-matter of " the last Conference, as desired by the Com- " mons."—See in the Appendix the further proceedings upon this question.

† See in the Lords Journal of the 1st of July, their mode of proceeding to this question, and the proclamation made upon their going back to Westminster Hall.—The Commons, previously to the Lords message, " That " they intend presently to proceed on the " trial," resolve, " That this House doth not " acquiesce in the proceeding on the trial of " Robert Earl of Oxford, in the manner pre- " scribed by the Lords."

‡ It is an anecdote, now generally believed, " That, though this dispute between the two Houses (which articles should be first proceeded on) was the ostensible cause for dismissing the impeachment against Lord Oxford, the real cause was, a letter or paper, signed by the Duke of Marlborough just before Queen Anne's death, which shewed his connection, at that time, with the abdicated family; and, which letter Lord Oxford had in his possession."—In the notes to the article *Churchill*, in

22. On the 26th of April, 1725, the Lords appoint the trial of the Earl of Macclesfield at the Bar* of the Houſe of Lords, and ſend a meſſage to the Houſe of Commons to this effect, "and that "their Lordſhips will order conveniencies to be prepared there for "the Managers of the ſaid impeachment."—And the Clerk of the Houſe of Lords is authorized to iſſue ſummonſes for ſuch witneſſes as ſhall be deſired by the ſaid Earl †.

23. On the 1ſt, 3d, and 4th of May, 1725, the Lords make ſeveral rules and regulations touching the places of the Lords, and wearing their robes, "and where the impeached Lord is to ſit uncovered ‡," ſome of which are communicated by meſſage to the Commons on the 5th of May.

24. On the 6th of May, 1725, the trial began §; before the Managers go up, the Commons reſolve, "That the Managers be at "liberty to proceed in ſuch manner, and upon ſuch articles, as they "ſhall think moſt important for expediting the trial ‖."

in the new Biographia Britannica, Vol. III. p. 562, this anecdote is very well authenticated from the late James Weſt, Eſq.

* See in the Journal the proteſt of ſome Lords againſt holding this trial at the Bar of the Houſe of Lords, and not in Weſtminſter Hall.—The Commons, on the 27th of April, appoint a Committee to ſearch precedents, touching proceedings on impeachments at the Bar of the Lords, who report on the 5th of May.

† The proceedings at large, on the trial, are printed in the State Trials, Vol. VI.

‡ See before, p. 208, the diſpute, which aroſe between the two Houſes, on the ſubject of an order made by the Lords, in the caſe of the Lord Viſcount Mordaunt, in the year 1666, reſpecting the place and manner in which he ſhould ſit during his trial.

§ The Commons, on the 5th of May, 1725, having read, out of their Journal of the 16th of January, 1702, their proceedings on going to a Free Conference with the Lords, reſolve, "That whilſt the Committee appointed to "manage the evidence againſt Lord Macclesfield are at the Houſe of Lords proceeding "on the ſaid trial, this Houſe will remain in "the ſame ſtate as they are in, when there is "a Conference between the two Houſes."

‖ When any objection was taken at the Bar, pending the trial, all parties concerned were directed to withdraw.—See the 7th, 12th and 13th of May.

25. On the 24th of May, 1725, the Lords, after the trial of Lord Macclesfield is concluded, and before they agree upon the form of the queſtion to be put, of Guilty, or Not guilty—come to a reſolution, "That the Commons have made good their charge of "high crimes and miſdemeanors againſt Thomas Earl of Macclef-"field."

26. On the 25th of May, 1725, the queſtion, "Guilty or Not "guilty?" is put ſeverally to the Lords, in the preſence of the Managers; and, on the 26th, Lord Macclesfield "attends at "the Bar," purſuant to an order of the Lords; where the Managers being come, the Speaker of the Houſe of Lords acquaints Lord Macclesfield, that the Lords had unanimouſly found him guilty *.

27. On the 26th of May, 1725, after Lord Macclesfield has been found guilty, and he offering nothing in arreſt of judgment, the Lords proceed to the conſideration of what judgment to give upon the impeachment †.

28. On the 9th of March, 1746, the trial of Lord Lovat came on in Weſtminſter Hall ‡.—After the Court is formed, the articles, and Lord

* Lord Macclesfield, proceeding to mention ſome circumſtances in mitigation of his crimes, is interrupted by the Managers, as being irregular, "his Lordſhip not offering "any thing in arreſt of Judgment." The Earl and Managers being withdrawn, he is ordered to be committed to the cuſtody of the Black Rod.

† See in the Journal the ſeveral queſtions that were put upon this occaſion, and the proteſts thereupon.—It is reſolved, "That the "ſaid Earl be fined £. 30,000."—He is ordered to be committed priſoner to the Tower till he has paid the ſaid fine. There is no enquiry, by a Committee, as there was in the caſe of Goudet and others, (which ſee before, p. 260,) into the particular value of the eſtate of Lord Macclesfield.

‡ Neither Frederick Prince of Wales, or William Duke of Cumberland attended this trial as Peers.—On the trial of Lord Byron, upon an indictment for murther, in the proceſſion to Weſtminſter Hall, on the 16th of April, 1765, the Lord Chancellor gave the precedence, in rank, to the King's brothers the Dukes of York and Glouceſter; but on the ſame day, after the Lord High Stew rd's commiſſion had been read, on the return to the Houſe

Lord Lovat's anſwer, and the replication, are read; and then the Lord High Steward addreſſes the priſoner *.

29. On the 10th of March, 1746, whilſt the Lords are adjourned to the Chamber of Parliament, to conſider of an objection taken by Lord Lovat's Counſel to a witneſs †, the Managers did not go from the Bar.—But on the 18th of March, the Lords having adjourned, and being ready again to proceed, but underſtanding that the Commons were returned from the Court below to their own Houſe, ſend a meſſage to the Commons, "That the Lords are ready to go down to proceed farther in the "trial."

30. On the 16th of March, 1746, Lord Lovat having requeſted that Mr. M'leod, a Member of the Houſe of Commons, might be examined as a witneſs, the Lords ſend a meſſage to the Commons, to deſire that they will give leave to Mr. M'leod to be examined; which is granted accordingly.

Houſe of Lords, "the Lord High Steward" took place of the Duke of York.—On the next day, the 17th of April, it appears from the Lords Journal, that, when the commiſſion was diſſolved, in the proceſſion back from Weſtminſter Hall to the Houſe of Lords, the Dukes of York and Glouceſter had again the precedence, in rank, above "the Lord Chancellor." But ſee before in the note † in p. 212 of this volume, a different proceeding on the trial of Lord Stafford, in the inſtance of Prince Rupert, Duke of Cumberland.

* In the courſe of this ſpeech, Lord Hardwicke ſays, "your Lordſhip cannot entertain "the leaſt doubt of a juſt and impartial trial, "where the law of the land, and the cuſtom "and uſage of Parliament (an eſſential part of "that law) conſtitute the rule of proceeding."

† The debate and reſolution upon this queſtion, on the admiſſibility of evidence, was in the Chamber of Parliament, and not in Weſtminſter Hall: and the determination was ordered to be communicated to the Commons by the Lord High Steward. It appears from the Lords Journal of the 10th of March, that the Lords thought themſelves competent to determine this queſtion, without referring it to the Judges for their opinion.—Soon after the trial of Lord Lovat was finiſhed, on the 4th of May, 1747, a Bill was ordered in in the Houſe of Commons, *Nemine contradicente*, For allowing perſons impeached of High Treaſon, to make their full defence by Counſel.—See this Statute, the 20th Geo. II. ch. 30.

31. On

31. On the 18th of March, 1746, the evidence againſt Lord Lovat being cloſed *, he is called upon to make his defence; but deſiring further time for witneſſes to appear, the Managers for the Commons were heard in objection, and to ſum up by way of reply †. —The Lords then adjourn to the Chamber of Parliament, and there reſolve ‡, "to go down again to Weſtminſter Hall, and there pro-"ceed to give their opinions, Guilty, or Not guilty §;" which proceeding is had accordingly, the Managers for the Commons being preſent.—And Lord Lovat being unanimouſly found Guilty, he is brought to the Bar, and the Lord High Steward acquaints him therewith.—And then the Lords adjourn to the Chamber of Parliament, where they reſolve to proceed, the next day, to the giving of judgment; and they acquaint the Commons of this by meſſage.

* The Commons cloſed their evidence on the 16th of March, when Sir John Strange, one of the Managers, was heard at large to ſum up the ſame; but on the 18th, Lord Lovat declining to call witneſſes, Mr. Murray, Solicitor General, another of the Managers, who was aſſigned to cloſe the proceeding, was fully heard by way of reply.

† The proceeding, from the Lords Journal of the 16th of March, 1715, in the caſe of the Earl of Winton, was read.

‡ The Lords, neither in Lord Lovat's or Lord Winton's caſe, come to any prior reſolution, "That the Commons had made good "their charge;" as they had done in the inſtances of Dr. Sacheverel and Lord Macclesfield; theſe were both caſes of impeachments for "high crimes and miſdemeanors," and not for a capital offence.

§ Before they go down, the Archbiſhop of York for himſelf and the reſt of the Biſhops, delivered in a proteſtation, which is read, "ſaving to themſelves and their ſucceſſors all "ſuch rights in judicature as they have by "law, and of right ought to have;" and deſiring leave to be abſent from the judgment, and to withdraw.—Leave is accordingly granted.—It appears from the Lords Journals, that the Biſhops had attended, through the courſe of the trial, to this ſtage; and had conſequently voted in all the previous queſtions, particularly, on the 10th of March, on the admiſſibility of a witneſs. In the liſt read over by the Clerk on the 9th of March, of the names of the abſent Lords, it appears that only ſeven Biſhops were abſent; nineteen were preſent.

## VI. *Commons demand Judgment.*

1. THE Lords, in the caſe of Goudet and others, who had pleaded Guilty to the impeachments of the Commons for high crimes and miſdemeanors, having appointed a Committee to inform themſelves of the particular value of the eſtates of the ſaid ſeveral perſons, receive from that Committee a report on the 2d of July, 1698; the Lords then reſolve on the puniſhment; and ſend a meſſage to the Commons, on the 4th of July, "That they "are ready to give judgment, if the Commons, with their Speaker, "will come and demand it."—The Commons, on receiving this meſſage, reſolve, "That they will go up and demand judg-"ment *."

2. The Lords having, on the 21ſt of March, 1709, † determined, after debate, and ſeveral queſtions, what cenſure to paſs upon Dr. Sacheverel,

* See, in the Journals of the Lords and Commons, the form of the Commons demanding, and the Lords pronouncing, judgment upon this occaſion.

† On the ſame day, the 21ſt of March, the Commons reſolve, to thank the Managers of the impeachment, for their faithful management in the diſcharge of the truſt repoſed in them. See in the 8th vol. of the State Trials, p. 547, a ſummary of the debate on this queſtion. It was, amongſt other arguments againſt thanking the Managers, urged, That there was but one inſtance of ſuch a proceeding, viz. The thanks given to Sir Heneage Finch, Attorney General, for his maintaining the rights and privileges of the Houſe of Commons, in 1671, againſt the Lords. Another inſtance might have been found, and one more applicable to this caſe, viz. On the 25th Nov. 1640, when Mr. Pym was thanked "for his well "delivery of the charge againſt the Earl of "Strafford." And another on the 14th of January, 1640, where the Houſe return thanks to Mr. St. John, Mr. Whitlocke, Lord Falkland, and Mr. Hyde, "for the great ſervice "they have performed, to the honour of this "Houſe, and good of the Commonwealth, in "the transferring the buſineſs of Ship Money, "and the other matters concerning the liberty "and property of the ſubject, and the articles "againſt the late Lord Keeper Finch."—See alſo in Grey's Debates, Vol. III. p. 283, the thanks of the Houſe, given by the Speaker, on the 8th of June, 1675, to Sir John Robinſon, a Member

Sacheverel, who had been found guilty of high crimes and misdemeanors, upon the impeachment of the Commons, send a message to the Commons, on the 22d, "That they are ready to give judg-"ment, if the Commons, with their Speaker, will come and demand "the same."—Upon the receipt of this message, the Commons resolve, "That this House will demand judgment of the Lords against "Dr. Henry Sacheverel."—And, on the 23d of March, they send a message to the Lords, "That this House, with their Speaker, do in-"tend immediately to come to the House of Lords, to demand "judgment; which they do accordingly *."

3. On the 20th of January, 1715, as soon as the message from the Lords is delivered, That several of the Scotch Lords impeached had pleaded guilty to the articles of impeachment exhibited against them, the Commons resolve, *nem. con.* (1.) "That this House will

a Member for the city of London and Lieutenant of the Tower, in his place, "for hav-"ing, like a worthy person and trusty Com-"moner, done his duty in obeying the orders "of the House."

* When the Speaker (Sir Richard Onslow) went up with the House to demand judgment against Dr. Sacheverel; as the Mace was going into the House of Lords before the Speaker, the Black Rod endeavoured to hinder it, by putting his Black Rod cross the door; on which the Speaker said, "If he did "not immediately take away the Black Rod, "he would return to the House of Com-"mons."—The Black Rod desired him to stay a little, and he would acquaint the Lords. The door was shut, and Mr. Speaker and the House staid without.—After a little time the door was opened, and Mr. Speaker, with the Mace, went in.—As Mr. Speaker was going to the Bar, the Black Rod attempted to interpose himself between the Speaker and the Mace; upon which the Speaker said aloud, "My Lords, if you do not immediately or-"der your Black Rod to go away, I will im-"mediately return to the House of Com-"mons." Then Lord Chancellor Cowper directed the Black Rod to go from thence. Then Mr. Speaker, with the Mace, went up to the Bar.—The Black Rod was then ordered to bring the prisoner; and the Black Rod was going to put him on the right hand of Mr. Speaker; who, upon that said, "If you don't "order the Black Rod to go with the pri-"soner on the left hand of me, at some dis-"tance, I will return to the House of Com-"mons."—Upon which the Lord Chancellor directed the Black Rod so to do; and then Mr. Speaker demanded the judgment, and the Lord Chancellor accordingly pronounced sentence upon the prisoner, kneeling at the Bar.—Mr. O.

There is a memorandum to this purport entered in the Journal of the House of Commons, 23d March, 1709; but no mention is made of this transaction in the Lords Journal.

"demand

" demand judgment againſt them; and (2.) That * to-morrow " morning this Houſe will, with Mr. Speaker and the Mace, go up " to the Bar of the Lords Houſe, and, in the name of the knights, " citizens, and burgeſſes in Parliament aſſembled, and of all the " Commons of Great Britain, demand judgment againſt the ſaid " Lords."—On the 23d of January, the Commons ſend a meſſage to the Lords, that they do intend immediately to come to demand judgment; and therefore deſire, That the Painted Chamber and paſſages may be cleared.—The Speaker, with the Houſe, go up; and Mr. Speaker reports, " That he, in the name of the Commons, " &c. had demanded judgment †."

4. On the 28th of January, 1715, the Lords (after a report from a Committee appointed to conſider of the forms and methods of proceeding to judgment againſt the impeached Lords) reſolve to addreſs the King to conſtitute a ‡ Lord High Steward; and alſo, that he will be pleaſed to order the guards to attend on the day the Houſe ſhall give judgment §.

5. On the 2d of February, 1715, the Commons receiving a meſſage from the Lords, That their Lordſhips had appointed to give judgment on the impeached Lords on the 9th of February, reſolve, " That they will be preſent as a Committee of the

* This, on the next day, the 21ſt, is altered to Monday the 23d of January,

† As ſoon as the Speaker, with the Houſe of Commons, were withdrawn from the Houſe of Lords, the Lords reſolve to go into a Committee, the next day, to conſider of the forms and methods of proceeding to judgment in a caſe of ſuch nature as that of the Lords who have pleaded guilty.—They report on the 28th of January.

‡ See, in the Lords Journal of the 28th of January, the form of this commiſſion, as prepared by the Judges.—It amongſt other things, recites, " Nos conſiderantes quod J. " Comes de Derwentwater, &c. ſecundum le- " gem et conſuetudinem hujus Regni noſtri " Magnæ Britanniæ, et " ſecundum conſuetu- " dinem Parliamenti" audiantur, ſententientur " et adjudicentur, ac pro eo quod Proceres et " Magnates nobis humillime ſupplicaverunt " ut Seneſchallum Magnæ Britanniæ pro hac " vice conſtituere dignaremur."

§ Several other forms and reſolutions are adopted in the report, which ſee in the Lords Journal of the 28th and 31ſt of January.

" whole

" whole Houſe when the Lords give judgment againſt the ſaid " Lords *."

6. On the 7th of February, 1715 †, the impeached Scotch Lords being to receive judgment on the 9th, and the Houſe of Lords having made an order, That if any thing is offered in arreſt of judgment they may be heard by their Counſel—the Houſe of Commons make an order, " That the Committee of Secrecy be appointed " Managers on behalf of the Commons ‡, in caſe any thing ſhall " be offered in arreſt of judgment on the behalf of the ſix im- " peached Lords."

7. On the 9th of February, 1715, previouſly to the ſix impeached Lords receiving judgment, the Archbiſhop of Canterbury, for himſelf and the reſt of the Biſhops, delivered in a proteſtation for leave to be abſent, and ſaving their rights in judicature §; which is accordingly granted.—The Lords then proceeded to read the commiſſion of the Lord High Steward, and adjourned to Weſtminſter Hall; where the impeached Lords having nothing to offer in arreſt of judgment, the Lord High Steward pronounced judgment accordingly ‖.

8. On

* On the 3d and 7th of February, the Commons give directions about their ſeats in Weſtminſter Hall, and their manner of going thither.—See, on the 9th of February, the form of the Managers and Houſe being called over, in order to their being preſent at the ſaid judgment.

† See, in the Commons Journal of the 7th of February, Mr. Lechmere's report from the Committee, appointed to examine the Lords Journal, touching the form of the Lord High Steward's Commiſſion, as compared with the Commiſſion in the caſe of Lord Stafford.

‡ No Managers had been previouſly appointed, as, the impeached Lords having pleaded guilty, there had been no trial.

§ See this proteſtation in the Lords Journal.

‖ In the courſe of his ſpeech Lord Cowper ſays, " Though one of your Lordſhips, in the " introduction to his plea, ſuppoſes this im- " peachment to be out of the ordinary and com- " mon courſe of the law and juſtice, it is yet as " much a courſe of proceeding, " according to " the common law," as any other whatſoever. " —If you had been indicted, the indictment " muſt have been removed and brought before " the Houſe of Lords, the Parliament ſitting. " —In that caſe you had been accuſed ('tis " true)

8. On the 17th of March, 1715, the Lords ſend a meſſage to the Commons, That they intend to proceed to judgment on the Earl of Winton on the 19th.—The Commons reſolve, "That they will "be preſent as a Committee of the whole Houſe, when the Lords "ſhall proceed to judgment."—And alſo reſolve, *nem. con.* "That "the Managers for the Commons be impowered, in caſe the Houſe "of Lords ſhall proceed to judgment before the ſame is demanded by "this Houſe, to inſiſt upon it, that it is not parliamentary for their "Lordſhips to give judgment until the ſame be firſt demanded by "this Houſe."

9. On the 19th of March, Lord Winton, being aſked, before the Lords proceeded to judgment, whether he had any thing to move in arreſt of judgment, ſaid, "That he was not ſuch a perſon "againſt whom judgment for High Treaſon ought to be pro-"nounced *."—The Lords adjourn to the Houſe above, and determine this to be a matter of fact and not of law; and that he is ſuch a perſon, againſt whom judgment for High Treaſon ought to be given.

10. On the 19th of March, 1715, Lord Winton being aſked again, after his firſt objection had been over-ruled, whether he had any thing to offer, why judgment ſhould not paſs, objects, "That "the impeachment is inſufficient, for that the time of committing

"true) by the Grand Jury of one county: In "the preſent, the whole body of the Commons "of Great Britain, by their repreſentatives, "are your accuſers."—On the 22d of November, 1717, the Earl of Carnwarth and Lord Widdrington, upon their knees, at the Bar of the Houſe of Lords, pleaded the benefit of the Act of general pardon; which was allowed them.

* Sir Conſtantine Phipps, one of Lord Winton's Counſel, attempting to ſpeak to this point, the ſame was objected to by the Managers for the Commons; and he continuing to ſpeak, though interrupted by the Lord High Steward, the Lords direct the Lord High Steward to reprimand Sir Conſtantine Phipps "for having begun to ſpeak without "any point of law ſtated, or leave given by "the Court to ſpeak."—And, upon the Lords return to Weſtminſter Hall, the Lord High Steward reprimands Sir Conſtantine Phipps accordingly.

" the High Treaſon is not laid with ſufficient certainty."—His counſel are heard, and ſome of the Managers, to this point, and alſo in reply; when the Lords adjourned to the Houſe above; and the Speaker and the Houſe of Commons then came, and, at the Bar of the Houſe of Lords, demanded judgment againſt the ſaid Earl *, and they being withdrawn, ſome queſtions are put to the Judges, to which they give an anſwer †; and then the Lords reſolve, " That

* This was in conſequence of a reſolution of the ſame day, the 19th of March, " That " this Houſe will immediately go, with their " Speaker and the Mace, to the Bar of the " Houſe of Lords, and demand judgment of " High Treaſon againſt the Earl of Winton, " upon the impeachment of the Commons."

† The objection made in arreſt of judgment was, " That the impeachment is inſufficient, " for that the time of committing the High " Treaſon is not therein laid with ſufficient " certainty."—The queſtions put to the Judges, for their opinion, were,

(1.) " Whether, in indictments for treaſon " or felony, it be neceſſary to allege ſome " certain day upon which the fact is ſuppoſed " to be committed; or, if it be only alleged " in ſuch indictments that the crime was com- " mitted on or about a certain day, whether " that would be ſufficient?"

To this queſtion they anſwer, " That it is " neceſſary that there be a certain day laid in " ſuch indictments, on which the fact is al- " leged to have been committed; and, that " the alleging in ſuch indictments, that the " fact was committed on or about a certain " day, would not be ſufficient."

(2.) The next queſtion was, " If a certain " day ought to be alleged, when the fact is " ſuppoſed to be committed, whether it be " neceſſary, upon the trial, to prove the fact " to be committed on that day?"

To this the Judges anſwer, " That al- " though a day certain, when the fact is ſup- " poſed to be done, be alleged in ſuch indict- " ments, yet it is not neceſſary, upon the trial, " to prove the fact to be committed upon that " day; but that it is ſufficient, if proved to " have been done on any other day before the " indictment found."

The Lords then reſolve, and direct the Lord High Steward to acquaint the priſoner at the Bar, in Weſtminſter Hall, " That the Lords " have conſidered the matters moved in arreſt " of judgment, and are of opinion, That they " are not ſufficient to arreſt the ſame; but " that the impeachment is ſufficiently certain in " point of time, " according to the forms of im- " peachments in Parliament." It appears from the articles of impeachment, which are entered in the Lords and Commons Journals of the 9th of January, 1715, that the greater part of the facts charged are laid to be committed " on or about the months of Septem- " ber, October, or November, laſt;" and, " that the taking the town of Preſton, and the " battle there, was laid to be done on or " about the 9th, 10th, 11th, 12th, or 13th of " November laſt."—The objection ariſing from this want of preciſion would, if the proceeding had been by way of indictment, (and tried according to the rules of the Courts below) and not by impeachment, (and therefore to be tried according to the law and uſage of Parliament) have been ſufficient, according to the opinion of the Judges, to arreſt the judgment. The ſubſtance of the arguments on this queſtion, as urged by the Managers, appears

" That the matters moved in arreſt of judgment are not ſufficient " to arreſt the ſame."—The Lords return to Weſtminſter Hall, where (the Commons being preſent) the Lord High Steward pronounces judgment.

11. On the 27th of May, 1725, Lord Macclesfield having been found guilty, and the Lords having agreed, that he ſhould be fined £. 30,000 *, they ſend a meſſage to the Commons to acquaint them, " that their Lordſhips are ready to give judgment † againſt the " Earl of Macclesfield, if the Commons, with their Speaker, will " come and demand the ſame."—The Commons immediately reſolve, " That they will demand judgment," and ſend a meſſage to the Lords to this effect ‡.

12. On the 18th of March, 1746, the Commons, on receiving a meſſage from the Lords, that their Lordſhips will proceed to-morrow, to the giving of judgment againſt Simon Lord Lovat, reſolve, *Nemine contradicente*, " That the Managers be impowered, in caſe the Houſe " of Lords ſhall proceed to give judgment before the ſame is de- " manded by this Houſe, to inſiſt upon it, That it is not parlia-

pears in the State Trials, Vol. VI. p. 52, in which Mr. Cowper ſays, " This queſtion is to " be determined by the uſage and practice of " the High Court of Parliament; and Lord " Winton's Counſel cannot but know, That " the uſages of Parliament are part of the law " of the land, although they do differ in many " inſtances from the Common Law, in point of " form, as practiſed in the inferior Courts."

* It does not appear, that the Lords directed any enquiry to be made into the value of Lord Macclesfield's fortune, by which the quantum of the fine might be regulated; as they had done, in the year 1698, in the caſe of Goudet and others.—See before, p. 260.

† See, in the Journals of the Lords and Commons of the 27th of May, the form of this proceeding, of the Speaker's going, with the Mace, to the Bar of the Houſe of Lords, and demanding judgment there.

‡ Before the Commons go up, with the Speaker, to demand judgment, they reſolve, *nem. con.* " That the thanks of the Houſe be " given to the Managers, for their faithful " management in the truſt repoſed in them." —The ſpeech of the Speaker, upon this occaſion, is ordered to be printed, and is inſerted in the Journal of the 27th of May.

" mentary

" mentary for their Lordſhips to give judgment until the ſame be " firſt demanded by this Houſe *."

* See, on the 19th of March, the form of the Commons demanding judgment in the Houſe of Lords, and of judgment being pronounced in Weſtminſter Hall by the Lord High Steward.—In the Appendix to the State Trials, Vol. X. p. 188, there are publiſhed ſeveral proceedings relating to Lord Lovat, with a curious account of his behaviour, whilſt in the Tower, and at the place of execution.

## VII. *Bills of Attainder.*

1. ON the 20th of June, 1689, a Bill was ordered * for attainting ſeveral perſons of High Treaſon, who are now in Ireland, or in other parts beyond the ſeas, adhering to their Majeſties enemies, and who ſhall not return into England by a certain day.—This Bill paſſed the Houſe of Commons on the 11th of July.—On the 2d of Auguſt, the Lords deſire to know the names of the witneſſes who gave evidence againſt the perſons attainted by the Bill.—Theſe names are communicated to the Lords at a Conference, on the 5th of Auguſt.—On the 20th of Auguſt the Lords return the Bill, with a great number of amendments; which the Commons are prevented, by the cloſe of the ſeſſion, from taking into conſideration.

2. On the 22d of October, 1690, a Bill is ordered in, for attainting the perſons that are or have been in rebellion, in England or Ireland, and for confiſcating their eſtates, and for applying the ſame to bear the charge of the war †.

3. The King having ordered ſeveral papers and informations to be laid before the Houſe of Commons, on the 6th of November, 1696, the ſame are read, and Sir John Fenwick is immediately

* It does not appear from the Journal, that this Bill, when ordered to be brought in, was grounded on any previous information, or examination of witneſſes, but upon the notoriety of the facts alone.—On the 4th of Auguſt, Mr. Serjeant Trenchard acquaints the Houſe (for the purpoſe of informing the Lords) with the names of thoſe who gave evidence at the Bar, and in the Committee, againſt the perſons named in the Bill.

† This Bill paſſed the Houſe of Commons on the 23d of December, but was never returned from the Lords.

ordered to be brought from Newgate.—He is accordingly brought to the Bar, and, being called upon to make a diſcovery, which he refuſes to do, the Houſe reſolve, "That a Bill be brought in to attaint "Sir John Fenwick of High Treaſon *."

4. On the 24th of March, 1696, a Bill is ordered in for recovering the perſon of Hannah Knight, an infant; and to diſannul the pretended marriage of the ſaid infant, and to attaint one Paſſmore of felony for taking away the ſaid infant, if ſhe don't produce and deliver her up by a certain time †.

5. On the 2d of January, 1701, reſolved, *nem. con.* in the Houſe of Commons, That a Bill be brought in for the attainder of the pretended Prince of Wales ‡.—It paſſed the Houſe of Commons on

* The proceedings upon this Bill, the arguments of Counſel for and againſt the Bill, and the debates in the Houſe of Commons, are collected, and publiſhed in one volume in 1698. They are alſo printed in the 5th volume of the State Trials, p. 40.—The Bill paſſed the Houſe of Commons on the 25th of November.—Before the Bill is read in the Houſe of Lords, they reſolve, on the 1ſt of December, "That there ſhall be no uſe made of "proxies, in any caſe relating to this Bill;" and the Lords, every day that any ſtep is taken in the Bill, make an order, That the Houſe ſhall be called over on that day, before it riſes, and abſent Lords taken into cuſtody. —The Lords having heard Counſel and witneſſes for and againſt the Bill, it is read a ſecond time on the 18th of December; not referred to a Committee, but ordered to be read a third time; and is read a third time, and paſſed, on the 23d of December.—It appears from the Lords Journals, that the Biſhops attended and voted upon all the ſeveral parts of this proceeding, and upon the paſſing of the Bill, "though in a matter of blood."—See, in the State Trials, Vol. X. Appendix, p. 63, a liſt of the Lords who voted for and againſt this Bill.—It was carried 66 to 60.—Sir John Fenwick was executed on the 28th of January, 1696-7.

† At the Committee on the Bill, evidence is produced of this whole tranſaction: the Bill is reported on the 7th of April, and paſſed the Commons on the 9th of April; at which time, by alterations in the Committee, it is reduced to be a Bill "for annulling the mar-"riage, and directing the guardianſhip, of "the ſaid Hannah Knight."

‡ James the IId. died on the 6th § of September preceding—and the young Prince was acknowledged by the French, and had been by them proclaimed King of England at St. Germain's.—See in Macpherſon's State Papers, Vol. I. p. 589, 591, the character of King James; with an account of the manner of his death, by Sir David Nairne, who was preſent.—The King, on his death-bed, with great formality, bequeathed the Britiſh throne to his Son, and appointed his Queen to be Regent during the minority.

§ Biſhop Burnet ſays, he died on the 6th of September, 1701; Sir David Nairne ſays, on the 16th.—This difference ariſes from the difference between the Old and New Style.

the

the 15th of January *.—On the 23d, it was returned from the Lords, with amendments, which extended the attainder to Mary †, wife of the late King James ‡.—To theſe amendments the Commons diſagree

* By an Act, paſſed in the year 1708, the 7th of Queen Anne, ch. 21, ſect. 10, it is enacted, "That, after the deceaſe of the Pre-"tender, no attainder for treaſon ſhall extend "to the diſinheriting of any heir; nor to the "prejudice of any perſon, other than the of-"fender, during his life." By the 17th of Geo. II. ch. 29. ſect. 3, it is declared, "That "this proviſion ſhall not take effect, until af-"ter the deceaſe, not only of the ſaid Pre-"tender, but of his eldeſt and every other "ſon." See a very ingenious treatiſe, written whilſt this Bill was depending in 1744, by the late Lord Chancellor, Charles Yorke, then a very young man, intitled, "Conſiderations on "the Law of Forfeitures."—Cicero, in diſcuſſing this queſtion, ſays, "Nec vero me fu-"git, quam ſit acerbum, parentum ſcelera "filiorum pœnis lui: Sed hoc præclarè legi-"bus comparatum eſt, ut caritas liberorum "amiciores parentes reipublicæ redderet." Epiſt. ad Brutum, editio Olivet, N° 12. p. 112. And again, in another letter, writing about the ſame decree, which, at Cicero's motion, had paſſed againſt Lepidus, and which confiſcated all his fortune, he ſays, "In qua ſententia, "videtur illud eſſe crudele; quod ad liberos, "qui nihil meruerunt, pœna pervenit. Sed "id, et antiquum eſt, et omnium civitatum." Epiſt. ad Brutum, N° 15. p. 118.—In the 2d vol. of the Hiſtory of the Life of Henry IId. p. 528, Book 3d. Lord Littleton mentions an inſtance, where this penalty was extended to the baniſhment, and confiſcation of the goods and chattels, "of the kindred of the offender, and "of all who belonged to them, of whatſoever de-"gree, order, ſex, or condition they might be." —A moſt iniquitous and cruel proſcription of innocent perſons! And as Lord Littleton properly terms it, "entirely repugnant to natural "juſtice."

† Biſhop Burnet, in his Hiſtory, Vol. II. p. 297, ſays, "That the Lords extended this "attainder to the Queen, becauſe ſhe acted as "Queen Regent for her Son; but it was much "oppoſed; for no evidence could be brought "to prove that allegation; yet the thing was "ſo notorious, that it paſſed, and was ſent "down to the Commons." It appears from Macpherſon's State Papers, "That the Queen, "as Regent, and her Council had publiſhed a "declaration, ſetting forth the pretenſions of "the Prince of Wales after the death of his "father," and that this manifeſto had been printed in French, Engliſh, and Latin.—Vol. I. p. 600.

‡ On the 24th of January, the Commons appoint a Committee to ſearch precedents with relation to beginning of Bills of Attainder in either Houſe.—On the 26th, the Committee are impowered to ſearch the Lords Journals upon the ſame matter.—And, on the 29th, they report, "That they had inſpected the Jour-"nals of both Houſes; and that they find "more Bills of Attainder begun in the Houſe "of Lords than in the Houſe of Commons; "but that they do not find any inſtance of "any perſon being attainted by way of "amendment to any Bill."—On the 6th of February, the Commons aſſign their reaſon for diſagreeing to theſe amendments—"That "they believe it may be of dangerous conſe-"quence to attaint perſons by an amendment "only; in which caſe ſuch due conſideration "cannot be had, as the nature of an attainder "does require."—To this the Lords, at a Conference, on the 10th of February, reply, "That due conſideration, ſuch as the nature "of an attainder does require, may, in their "opinion, be had, when the attainder comes "in by way of amendment.—And the Lords "find, that the Commons themſelves did, by "way

agree on the 2d of February; and, on the 12th of February, after a Free Conference, the Lords do not inſiſt on their amendments.

6. On the 9th of Auguſt, 1715, the Commons, having impeached Lord Bolingbroke, and receiving a meſſage from the Lords, That, after a diligent ſearch and enquiry, the ſaid Lord Bolingbroke was not to be found *, ſo that he might be attached, immediately reſolve, "That leave be given to bring in a Bill to "ſummon Lord Bolingbroke to render himſelf to juſtice by a day "therein to be limited, or in default thereof to attaint him of High "Treaſon †."

7. On the 18th of Auguſt, 1715, a motion was made, and a queſtion put in the Houſe of Lords, That it be an inſtruction to the Committee to whom the Bill for attainting Lord Bolingbroke was committed, That they do enquire into, and report to the Houſe, "Whether Henry Lord Bolingbroke hath been ſummoned, and in "what manner;" but reſolved in the negative ‡.

8. On the 18th of Auguſt, 1715, after the ſecond reading of the Bill of Attainder againſt the Duke of Ormond in the Houſe

"way of amendment, add the names of ſeve-"ral perſons to be attainted, in an act of the "31ſt of Henry VIII. ſent from the Lords "for attainting the Marquis of Exeter; and "they have never heard of any ill conſe-"quence by that proceeding."—Notwithſtanding theſe reaſons, the Lords, convinced by what paſſed afterwards at a Free Conference, on the 12th of February, do not inſiſt upon their amendments; and, on the 20th, ſend down to the Houſe of Commons a ſeparate Bill for attainting Queen Mary, which I do not find was ever even read a firſt time.—It certainly did not paſs.

* Lord Bolingbroke, in his Letter to Sir William Wyndham, p. 36, explains the reaſons which induced him to take the reſolution of leaving England, "not in a panic terror, im-"proved by the artifices of the Duke of Marl-"borough, whom I knew, even at that time, "too well, to act by his advice or information "in any caſe; but on ſuch grounds, as the "proceedings which ſoon followed ſufficiently "juſtified."

† See a ſimilar proceeding, and a Bill of Attainder ordered in againſt the Duke of Ormond, on the 10th of Auguſt.—Theſe Bills paſſed the Houſe of Commons on the 15th and 16th of Auguſt.

‡ See the proteſt in the Lords upon this occaſion.

of Lords, a petition is preſented from the Ducheſs, ſtating, "That "her huſband being beyond ſea, the uncertainty of finding him out, "and the difficulty of giving him notice to ſurrender ſo ſoon as the "10th of September, are ſo great, ſhe prays the Houſe will give "him a larger time to ſurrender *."—The Houſe order the petition to lie upon the table; and immediately reſolve, "For the ſafety of "his Majeſty's perſon and government, that they will this day pro-"ceed further in the ſaid Bill."—They accordingly go into a Committee—report the Bill without amendment—read it a third time, and paſs it on the ſame day the 18th of Auguſt †.

9. On the 17th of January, 1715, the Commons having examined two witneſſes at the Bar, touching the Earl of Mar, and ſeveral other Lords, who were at that time in open rebellion in North Britain, reſolve, *nem. con.* That a Bill be brought in to attaint the ſaid Lords of High Treaſon.—The Bill paſſed the Houſe of Commons on the 26th of January.—On the 31ſt of January the Lords examine witneſſes on the ſecond reading of the ſaid Bill, and it received the royal aſſent on the 17th of February ‡.

* Upon reading this petition, the Lords order the Act for attainting Thomas Dolman and others, in the 17th of Charles II. to be read.—See before in this volume, p. 222.

† On the 20th of Auguſt this Bill, and the Bill for the attainder of Lord Bolingbroke, receive the royal aſſent, ſignified by *Le Roi le veult*.—And, on the 13th of September, notice being taken in the Houſe of Lords, "That "the names of the Duke of Ormond and "Lord Bolingbroke, attainted by Act of Par-"liament of High Treaſon, unleſs they ren-"dered themſelves to juſtice by the 10th of "September, ſtill remained in the roll of Peers "delivered in by Garter King at Arms," the Houſe order the Lieutenant of the Tower, or his deputy, to attend the next day, to give an account whether either of thoſe Lords had ſurrendered.—On the 14th of September, the Deputy Lieutenant of the Tower, and the Black Rod, being examined, and acquainting the Houſe that neither the Duke of Ormond or Lord Bolingbroke had ſurrendered, the Lords order, "That the Earl Marſhal of Eng-"land do cauſe the names of the ſaid Duke of "Ormond and Lord Bolingbroke to be razed "out of the roll of Peers in this Houſe; and "likewiſe out of all books and liſts in the "Heralds Office, wherein either of their "names are inſerted."—On the 17th of September, *Norroy* King at Arms, authoriſed by warrant from the Deputy Earl Marſhal of England, executes the former part of this order at the table of the Houſe of Lords.

‡ The royal aſſent to this Bill is *Le Roi le veult*.

10. On

10. On the 21ſt of March, 1715, Mr. Secretary Stanhope acquainted the Houſe, That there were ſeveral perſons at the door, who could give an account, what perſons of diſtinction had been in arms in Scotland on the part of the rebels.—They were ſeverally called in and examined, and gave the Houſe an account, that they had ſeen * Earl Mariſchal, Earl of Seaforth, Earl of Southeſk, and Earl of Panmure, in arms, on the part of the rebels. —The Houſe order "a Bill to be brought in to attaint the ſaid "Lords, if they render not themſelves to juſtice by a day to be "therein limited †."

11. On the 24th of May, 1716, the Houſe being informed, that Thomas Forſter ‡ and William Macintoſh, who were committed, and indicted for High Treaſon, had made their eſcape, and that perſons attended at the door who were witneſſes of the treaſon—the copy of their indictment was read, and two witneſſes examined; and then § a Bill is ordered to attaint them of High Treaſon.

12. On

* Earl Mariſchal fled beyond ſea, and reſided at Berlin and other foreign Courts 45 years; when having received his Majeſty's pardon in 1759, and a Bill having paſſed, to remove any diſability in him to inherit by reaſon of his attainder, he returned in the ſummer 1760.

† When this Bill is ordered, on the 20th of April, 1716, to be read a ſecond time in the Houſe of Lords, they make an order, "That "ſuch perſons as were examined as witneſſes "before the Houſe of Commons, in relation "to the ſaid Bill, do then attend."—The Bill was read a ſecond time on the 27th of April. —The witneſſes were then examined at the Bar, and then the Bill was committed.—See in Comyns's Reports, p. 440, the caſe of Kennet Lord Duffus, who was included in this Act, and was coming over to ſurrender himſelf; but being taken into cuſtody at Hamburgh, by the King's miniſter there, was detained till after the laſt day of June, 1716, the day fixed for the parties to render themſelves. Chief Juſtice Eyre and Chief Baron Comyns were of opinion, that this was not a compliance with the Act of Parliament. Lord Chancellor Talbot and Lord Hardwicke approved of this opinion.—Several of the Lords, who had been impeached and convicted on account of this rebellion, and were under ſentence of death (viz. the Lords Carnwarth, Widdrington, and Nairn,) claimed the benefit of the Act of grace and free pardon which paſſed on the 15th of July, 1717, and were immediately diſcharged. It is ſaid in Tindal's Continuation of Rapin, "That the Lord Duffus was "continued under confinement, with an al-"lowance of £. 3 a week." Vol. XIX. p. 161.

‡ On the 10th of January preceding, the Houſe had reſolved, "That Thomas Forſter, "junior, a Member of this Houſe, having "been taken in open rebellion in arms againſt "his Majeſty, be expelled;" and immediately order a new writ for Northumberland.

§ This Bill paſſed the Commons: it is read

12. On the 29th of April, 1746, Mr. Chancellor of the Exchequer acquainted the Houſe, that ſeveral witneſſes attended at the door, who were ready and willing to give an account of ſome perſons who had appeared in arms on the part of the rebels during the preſent rebellion.—They were called in; and, after ſeveral examinations, on the 6th of May a Bill was ordered in "to attaint ſeveral Lords and other perſons of High Treaſon, unleſs they render "themſelves by a day certain, therein to be mentioned *."

read a ſecond time in the Houſe of Lords on the 20th of June, 1716; and then the witneſſes are examined to prove the allegations of the Bill, and it is committed.—The Bill receives the Royal Aſſent on the 26th of June.

* See in the State Trials, Vol. X. p. 202, the proceedings againſt Dr. Archibald Cameron in the Court of King's Bench in 1753, on this Bill; when the Chief Juſtice pronounced the uſual judgment in caſes of High Treaſon, "as an award of execution grounded on the Act of Attainder." Dr. Cameron was ſoon after executed at Tyburn.—This caſe is reported in Mr. Juſtice Foſter's Crown Law, p. 109. It appears to have been a matter of doubt in the Court, Whether they ſhould pronounce judgment, or only, conſidering the outlawry for a judgment, give a rule for execution.

## VIII. *Bills of Pains and Penalties.*

1. ON the 20th of March, 1688, a petition is preſented from Mr. Prideaux, complaining of a large ſum of money being extorted from him by the late Lord Chancellor Jeffryes, under pretence of procuring him a pardon for a ſuppoſed offence. —This petition is referred to a Committee; who report, on the 1ſt of May, 1689, all the circumſtances of the caſe *.—Upon which a Bill is ordered in "For charging the eſtates of the late "Lord Jeffryes †, late Lord Chancellor of England, with the re-"payment of the ſum of £. 15,000, and intereſt, which was by "him extorted from Edmund Prideaux, Eſquire ‡."

2. On the 18th of June, 1689, after an examination at the Bar of Mr. Juſtice Powell, touching the opinion given by the Judges §, in the caſe of Godwin and Hales, concerning the King's power of diſpenſing with the laws—the Houſe come to ſeveral re-

* Theſe circumſtances are very curious.—Amongſt others, it appears, that, when application was made for Mr. Prideaux's pardon, the anſwer was, "That it was impoſſible, for "that the King had given Mr. Prideaux to the "Lord Chancellor."

† Granger, in his Biographical Hiſtory of England, Vol. IV. p. 272, ſays, That he had ſeen (in a book printed in 1687) a dedication to Lord Jeffryes, by the titles of "Earl "of Flint, Viſcount Wycombe, and Baron "Wem."—But, as in this Bill he is ſtiled "Lord Jeffryes," it is certain he was never in full poſſeſſion of thoſe honours; though, perhaps, a patent for that purpoſe might have been preparing for him, when that dedication was publiſhed, juſt before the Revolution.—And yet, as late as the 8th day of June, 1688, in the warrant ſigned by him, and other Privy Counſellors, for committing the ſeven Biſhops to the Tower, he is only called "George Lord Jeffryes, Baron of Wem."—State Trials, Vol. IV. p. 300.

‡ The Bill dropt in this ſeſſion, and was renewed in the three next ſucceeding ſeſſions, but never paſſed the Houſe of Commons.—See the proceedings on the 9th of December and 23d of January, 1689.

§ See the ſubſtance of this examination, and of the Clerks of the Court of King's Bench, in the Journal; and the debates, in the courſe of this proceeding, in Grey's Debates, Vol. IX. p. 336, et ſubſ.

ſolutions, to except Sir Edward Herbert, Sir Francis Wythens, Sir Richard Holloway, and Sir Robert Wright, upon this head, out of the Bill of Indemnity, which was then depending in the Houſe of Commons.

3. On the 1ſt of July, 1689, the Commons, proceeding in the further conſideration of the heads of exception in the Bill of Indemnity, reſolve, upon the head of Commiſſioners in the ſeveral commiſſions for conſtituting the court for eccleſiaſtical cauſes, that the following perſons ſhall be excepted out of the Bill; George Lord Jeffryes—Robert Lord Sunderland—Nathaniel Crewe, Biſhop of Durham—Sir Edward Herbert—Theophilus Earl of Huntingdon—Sir Robert Wright—Sir Thomas Jenner—and Thomas Cartwright, Biſhop of Cheſter *.

4. On the 26th of October, 1689, the Commons order in a Bill for inflicting pains and penalties againſt ſuch perſons as have been the occaſion of violating the laws and liberties in the two laſt reigns.—This Bill was read a ſecond time on the 16th of January, and committed to the ſame Committee with the Bill of Indemnity, with an inſtruction to make one Bill of theſe two; but the proceeding on this Bill was interrupted by the prorogation.

5. On the 6th of November, 1689, a Bill is ordered to be brought in, *nem. con.* for the forfeiture of the eſtate and honour of

* See Grey's Debates, Vol. IX. p. 378, et ſubſ.—This Bill did not proceed further in this ſeſſion.—In the next ſeſſion another Bill of Indemnity was brought in; and the Committee of the whole Houſe, to whom the Bill was committed, agreed upon certain heads, upon which perſons might juſtly be excepted out of the Bill.—Theſe heads were reported on the 23d of January, 1689, and agreed to by the Houſe.—As theſe heads of exception contain many principles, which regard the free government and conſtitution of this country, they are inſerted in the Appendix, N° 14.—But this Bill was alſo ſtopped by the prorogation, on the 27th of January; and in the next ſeſſion an Act paſſed, "For the King's, "and Queen's moſt gracious general, and "free pardon."

George,

George, late Lord Jeffryes, Baron of Wem, late Lord Chancellor of England.—On the 9th of December ſeveral petitions are preſented againſt it.—The Bill is preſented on the 26th of November, but is never read a ſecond time.

6. On the 21ſt of December, 1694, a Bill is preſented to the Lords, to compel Edward Williams and William Williams, Eſquires, to bring forth the perſon of Sir Paul Pindar, Baronet.—On the 19th of January, this Bill paſſed the Lords; and on the 31ſt of January Sir Paul Pindar appears, and is ordered into the care of the Yeoman Uſher, that he may be brought into the Court of Chancery the next morning *.

7. On the 26th of March, 1695, a Bill is ordered in to oblige Mr. Edward Pauncefort to diſcover how he diſpoſed of the money paid into his hands for the army, and for puniſhing him in caſe he ſhall not make the diſcovery.—Mr. Tracey Pauncefort, Mr. James Craggs, and Mr. Richard Harnage, are ordered to be included in the ſame Bill.—On the 9th and 10th of April, the two Paunceforts pray to be heard by their Counſel againſt the Bill.—On the 24th of April, the Counſel for all the parties are heard at the Bar, and the Bill for puniſhing Craggs and Harnage paſſed the Houſe of Commons on the 27th; but is never returned from the Lords.

8. On the 26th of March, 1695, a Bill is ordered in, to oblige Sir Thomas Cook to give an account to whom he diſtributed certain ſums belonging to the Eaſt India Company.—On the 30th of March, he petitions to be heard by Counſel.—On the 6th of April, his Counſel is heard at the Bar upon the third reading of the Bill, and the Bill paſſes the Houſe of Commons.—On the

* This Bill did not paſs the Houſe of Commons.—See the Journal of the 13th of February and 18th of March.

17th

17th of April * the Lords ſend down a Bill to indemnify Sir Thomas Cook from actions and proſecutions he might be liable to in making this diſcovery.—This Bill was agreed to by the Houſe of Commons, and received the Royal Aſſent on the 22d of April †.

9. On the 27th of April, 1695, the Lords order the Judges to prepare a Bill ‡ to confine Sir Thomas Cook, Sir Baſil Firebrace, Charles Bates, and James Craggs, Eſquire, until the end of the next ſeſſion of Parliament, unleſs diſcharged ſooner by Parliament.—On the ſame day the Lord Chief Juſtice Treby delivers the Bill; it is read a firſt and ſecond time, committed, reported, and ordered to be ingroſſed, all in the ſame day, Saturday the 27th; and on the 29th it is paſſed by the Lords, and read a firſt time in the Houſe of Commons.—On the 30th of April the Bill is read a ſecond time, and petitions againſt it are preſented from Sir Baſil Firebrace and Mr. Bates, which are referred to the Committee, which ſits on that day.—It is reported and paſſed on the 1ſt of May; and on the 3d of May receives the Royal Aſſent.

10. On the 31ſt of December, 1696, a Bill is ordered in, *Nemine contradicente*, for confining and ſecuring Counter, and any others againſt whom there is information upon oath, of their being concerned in the horrid deſign to aſſaſſinate the perſon of his ſacred Majeſty §.

11. On

* The Commons, on receiving this Bill, ſend a meſſage to the Lords, to put them in mind of the Bill ſent from them for obliging Sir Thomas Cook to make a diſcovery.—Upon this meſſage, the Lords deſire a Conference, at which they ſtate their reaſons for changing the mode of proceeding againſt Sir Thomas Cook.

† This diſcovery was to be made upon oath, to a Joint Committee of Lords and Commons, who are appointed on the 22d and 23d of April, and who report this examination on the 24th.

‡ This was after a report made from the Joint Committee of both Houſes, which had been appointed to take the examination of ſeveral perſons upon oath; and a reſolution come to by the Lords, That the diſcovery made by Sir Thomas Cook to that Committee was not ſatisfactory.

§ A Bill was alſo ordered in at the ſame time, for attainting any of the ſaid perſons who

11. On the 21ſt of December, 1697, a Bill was ordered for continuing in priſon, Counter, Blackborne, and the other perſons mentioned in the former Act *.—This Bill paſſed both Houſes; and on the 14th of January received the Royal Aſſent.—On the 21ſt of March, 1698, another Bill was brought in for the ſame purpoſe, which received the Royal Aſſent on the 4th of May, 1699.—The impriſonment of theſe perſons was further continued by an Act paſſed in 1701, on the acceſſion of Queen Anne; by another Act, in 1715 †, on the acceſſion of George I. and by another Act paſſed in 1727, on the acceſſion of George II ‡.

12. On

who ſhall have fled from juſtice, and do not ſurrender by a certain time in order to their trial.—No examination of witneſſes was had, nor, as far as appears, was any ſpecial information given to the Houſe, prior to the ordering in of theſe Bills.—Theſe Bills were conſolidated, and preſented as one Bill on the 2d of January.—At the Committee, on the 5th of January, witneſſes are examined touching the perſons named in the ſaid Bill; and the Bill paſſes the Houſe of Commons on the 7th of January.—It is read a ſecond time in the Houſe of Lords on the 9th, and the Attorney General then produces evidence, againſt all the perſons named in the Bill, and alſo againſt Robert Blackborne.—His name was then inſerted in the Bill, by way of amendment; and to this amendment the Commons, on the 11th of January, after hearing evidence at the Bar againſt Robert Blackborne, agreed; and the ſame day the Bill received the Royal aſſent.

* Theſe perſons were Counter, Meldrum, Chambers, Blackborne, Bernardi, and Caſſils.

† Whilſt this Bill was depending, a petition from the perſons named in it was offered to the Houſe of Commons on the 12th of May; but on a queſtion, That it be brought up, it paſſed in the negative, 115 to 54.—In the Houſe of Lords, on the 3d of June, 1715, a ſimilar petition being read, ſtating, "That "the petitioners had been impriſoned for 19 "years without proof or trial, and therefore "praying, that they may be left to the law; "or, that they may he heard by their Counſel "againſt the Bill;" this petition was rejected without a diviſion.

‡ Theſe very remarkable laws, as they would now appear to us, ſeem to have made no impreſſion upon the hiſtorians of theſe reigns; for, neither in Burnet or Kennet, can I find any mention of ſuch Acts paſſing, or ſcarcely of the event which gave occaſion to them.—In the Continuation of Rapin's Hiſtory of England, there is a very full account of the Aſſaſſination plot, in which theſe men were engaged, and of the manner in which it was diſcovered. There is alſo a liſt of the conſpirators, named in the proclamation for apprehending them. — Tindal's Continuation of Rapin, Vol. XIV. p. 285.—In the Appendix to the State Trials, Vol. X. p. 64, N° 10, there is an account publiſhed of theſe proceedings, written by Major John Bernardi, one of the perſons, after he had been impriſoned in Newgate 33 years — he adds, "without "any allowance from government; and who "could never be admitted to bail, or to take "his trial, though ſeveral applications were "made to the Court of King's Bench for that "purpoſe,

12. On the 1ſt of February, 1697, a bill or bills are ordered in for puniſhing John Knight, and Charles Duncombe, Eſquires, and Bartholomew Burton, for falſe indorſing Exchequer Bills.—Three ſeveral Bills are preſented on the 7th of February.—On the 8th, copies of the Bills are ordered to be given to the parties, with leave for them to be heard by counſel.—On the 10th of February the Attorney and Solicitor General are ordered to take care for producing the evidence againſt Mr. Duncombe; and on the 14th the Bill is read a ſecond time, whilſt Mr. Duncombe and the counſel are preſent; and then the Bill is committed *.

13. On the 25th of February, 1700, a petition is read in the Houſe of Lords, from the Counteſs of Angleſea †, praying for leave to bring in a Bill of ſeparation from her huſband for cruelty.—On the 27th of February, the Lords appointed four Lords, named

" purpoſe, on the demiſe of King William, " Queen Anne, and George Iſt."—It appears from that account, that theſe perſons were, by ſeveral Acts of Parliament, made from time to time, confined priſoners (for life, as it happened) from the impoſſibility of procuring evidence, ſufficient to convict them of the crimes with which they were charged.—In a book, publiſhed in 1729, intitled, " A " ſhort Hiſtory of the Life of Major John " Bernardi written by himſelf," it is ſaid, in p. 109, that Counter was ſet at liberty by Queen Anne—and that Meldrum and Chambers had died in priſon, in the year 1724.—Bernardi died in Newgate in 1736, in the 82d year of his age, having been a priſoner there 40 years; from the year 1696.

* This Bill paſſed the Commons, but was rejected by the Lords on the 15th of March—Upon which occaſion the Lords made the following ſtanding order: " That no proxies, " for the future, ſhall be made uſe of in any " judicial cauſe in this Houſe, although the " proceeding be by way of Bill."—On the 14th and 16th of May, 1698, the Lords reject the other two Bills, and then addreſs the King, " That he will be pleaſed to give orders for " the effectual proſecution of Charles Dun- " combe, Mr. Knight, and Mr. Burton."—To which addreſs his Majeſty returns an anſwer on the 18th of May, " That he would " give immediate orders for their proſecution " at law.

† This Counteſs of Angleſea was a natural daughter of King James II. by a daughter of Sir Charles Sedley.—Lord Angleſea died in January, 1702; and in March, 1705, Lady Angleſea married John Sheffield Duke of Buckingham—ſhe ſurvived him and lived till 1743, in what is now called the Queen's Houſe in St. James's Park.—See a character of this Ducheſs of Buckingham ſuppoſed to be written by Pope, in Dr. Warburton's edition of Pope's Works, Vol. VIII. p. 246, with a letter from Pope to Mr. Moyſer, p. 251, which " explains the hiſtory of the writing and " publication of this extraordinary charac- " ter."

by

by Lord Angleſea, to go to Lady Angleſea, and endeavour to bring about a reconciliation; and, if they could not prevail, to report to the Houſe her ladyſhip's reaſons for her refuſal.—The Committee report on the 3d of March: and then leave is given to bring in the Bill *.

14. On the 31ſt of March, 1710, the Commons having come to ſeveral reſolutions againſt Sir Humphrey Mackworth, and ſeveral other perſons, as being guilty of notorious frauds and indirect practices in the Company of Mine Adventurers, order, that a "Bill be "brought in to prevent their leaving the kingdom, and alienating "their eſtates, until the end of the next ſeſſion of Parliament."—On the 5th of April, Sir Humphrey Mackworth is heard by his Counſel on the third reading of the Bill; and it paſſes the Houſe of Commons, and is carried up to the Lords; but, the King coming on that day to put an end to the ſeſſion, it is never read in the Houſe of Lords.

15. On the 11th of April, 1715, a petition is preſented to the Lords from the Lord Digby, ſtating, "that his eldeſt ſon did "abroad contract a frenzy, or diſorder, which diſpoſed him to the "moſt horrid miſchief and wickedneſs, in which he had conti-"nued four years, frequently threatening his father's life, and the "lives of other perſons; and that there is little likelihood he will "ever be cured or recover;" and therefore praying, "That leave

* See Lord Haverſham's proteſt on the 3d of March, and the proceedings of the Lords on the 1ſt and 11th of April, 1701, when, after hearing counſel on both ſides, Lady Angleſea is called in and examined.—See alſo the Commons Journal of the 3d, 9th, and 23d of May, 1701.—The Bill received the Royal aſſent on the 12th of June.—Perhaps an explanation may be thought neceſſary, by ſome of the readers of this work, for the having inſerted this "Bill of Separation" under the title of "Bills of Pains and Penalties;" but they will find, from the proceedings, that Lord Angleſea conſidered it in this light.

" may be given to bring in a Bill for confining the perſon of the " ſaid John Digby, and debarring him from his father's honours " and eſtate, making ſome other reaſonable proviſion for him *." —On the 13th of May, the Lords order a " Bill for appointing " perſons to take care of the perſon and eſtate of the ſaid John " Digby; and, if he ſhall marry without the conſent of ſuch perſons, " that the iſſue of ſuch marriage ſhall be diſabled from inheriting " his honour and eſtate †."

16. On the 1ſt of July, 1717, Lord Oxford being acquitted by the Lords, upon the Commons not appearing to make good the articles of impeachment, from a diſpute that had ariſen between the two Houſes ‡, touching the mode of proceeding; a motion is made in the Houſe of Commons, " That leave be given " to bring in a Bill to inflict ſuch pains and penalties upon " Lord Oxford, as his traitorous practices, and other high crimes " and miſdemeanors, do deſerve, and as ſhall be thought rea- " ſonable §."

17. On

* This petition is referred to a Committee to examine the allegations; and on the 21ſt of April, the Lord Preſident acquaints the Houſe, " That his Majeſty, having been acquainted " with this matter, was pleaſed to conſent that " the Houſe might determine therein as ſhall " be thought juſt."—The Committee report, on the 13th of May, ſeveral reſolutions.

† This Bill paſſes the Lords on the 2d of June; is agreed to by the Commons on the 27th of June; and receives the Royal aſſent on the 20th of July; but the latter part of the Bill, relating to diſabling his iſſue from inheriting the honours, was left out, before it paſſed the Lords; and the Bill was confined only to appointing perſons to take care of his perſon and eſtate.—It appears from Collins's Peerage, that this perſon, John Digby, died unmarried.

‡ This was the oſtenſible cauſe of Lord Oxford's acquittal; but the real cauſe probably was what is related, upon the authority of the late James Weſt, Eſquire, in the note ‡, p. 287.

§ The debate upon this queſtion is adjourned till the 3d of July, when this motion is laid aſide, and the Commons addreſs the King, " to except the Earl of Oxford out of " the Act of grace, which his Majeſty had " been graciouſly pleaſed to promiſe; to the " end that the Commons may be at liberty to " proceed againſt the ſaid Earl in a parlia- " mentary way;" to which addreſs the King, on the 6th of July, returns for anſwer, " That " he

17. On the 4th of January, 1720, the Commons order a Bill to be brought in, "to reſtrain the Sub-governor, Deputy-governor, Directors, Treaſurer, and other officers of the South Sea Company, from going out of the kingdom, for the ſpace of one year, and for diſcovering their effects, and preventing their alienating the ſame *."

18. On the 16th of January, 1720, the Lords, after an enquiry, order in a Bill "to incapacitate the Sub-governor, Directors, &c. of the South Sea Company, from holding any office longer than to the next election of Directors; and to diſable them from holding any office in the Eaſt India Company or the Bank of England."

19. On the 25th of February, 1720, the Commons direct proviſion to be made, in a Bill then depending, "That the deficiency of the money ſubſcription, taken by the South Sea Company, be made good and anſwered to the Company by the Directors."

20. On the 8th of March, 1720, after a long examination, and ſeveral reſolutions agreed to in the Houſe of Commons, relating to the conduct of Mr. Aiſlabie †, reſpecting the affairs of the South Sea

he will give directions, in relation to the Earl of Oxford, as deſired by the Commons."—Accordingly, in the Bill of pardon, which paſſed ſoon after, there is a clauſe, excepting the Earl of Oxford, Simon Lord Harcourt, Matthew Prior, and Thomas Harley, out of the proviſions of the Act.

* This Bill was ordered previouſly to the appointment of a Committee to enquire into the affairs and management of the South Sea Company.—On the 12th of January, the parties petitioned to be heard by their Counſel; their requeſt is not complied with; and the petition was ordered to lie on the table.—On the 21ſt of January they preſent a ſimilar petition to the Lords againſt the ſaid Bill; which petition is rejected.

† Mr. Aiſlabie, during the time of the tranſactions for which he was accuſed, had been Chancellor of the Exchequer.—On the 15th of July,

Sea Company, he is expelled, and committed to the Tower, and a Bill is ordered in "for reſtraining him from going out of the king-"dom, and preventing the alienating his effects *."

21. On the 10th of March, 1720, the Commons order in a Bill "for making the eſtates of † Sir George Caſwall, Jacob "Sawbridge, and Elias Turner, ſubject and liable to anſwer "and make good to the South Sea Company a ſum of "£.250,000."

22. On the 8th of March, 1722, after reading the report from the Committee appointed to examine Chriſtopher Layer, and others, the Commons reſolve, "That it appears, that John "Plunket has been a principal agent and inſtrument in the con-"ſpiracy for raiſing a rebellion, &c.;" and immediately order in a Bill, "for inflicting certain pains and penalties on John "Plunket ‡"—On the 11th of March a ſimilar proceeding is had, and Bills are ſeverally ordered § "for inflicting certain pains and "penalties

July, 1721, whilſt this Bill is depending in the Houſe of Lords, the Lords, upon his petition, give leave, that Mr. Aiſlabie be heard by himſelf before the Committee; but the petition of the Sub and Deputy Governor (which is offered on the 10th of July) deſiring to be heard by counſel againſt a Bill, for raiſing money upon their eſtates, is rejected.

* On the 18th of May, 1721, the Houſe of Commons give an inſtruction to the Committee upon this Bill, to receive a clauſe for diſabling the late Sub-governor, Directors, &c. "of the South Sea Company, and alſo "John Aiſlabie, Eſquire, to hold or enjoy any "office or place of truſt or profit under his "Majeſty, or to ſit or vote in either Houſe of "Parliament."—See, on the 28th of June, the Report of this Bill, and the allowances that are ſeverally made to the Directors for the maintenance of themſelves and families.—See, on the 25th of July, 1721, the reaſons given by the Commons for purſuing this mode of proceeding; "which, but from ne-"ceſſity, they would have left to a due courſe "of law."

† Sir George Caſwall, being a Member, is expelled, and committed priſoner to the Tower.

‡ See the proceedings in Parliament, upon the Bills againſt Plunket, Kelly, and Biſhop Atterbury, in the State Trials, Vol. VI. p. 335.

§ On the 19th of March, the Bills againſt Plunket and Kelly are preſented, and read a firſt time, and ordered to be read a ſecond time; and copies of the Bills, and of the orders for the ſecond reading, are directed to be ſent to the reſpective parties; and the Attorney and Solicitor General are to take care that the evidence be ready in ſupport of the Bills.

" penalties upon George Kelly, and Francis Lord Biſhop of " Rocheſter *."

23. The Bill againſt Plunket being to be read a ſecond time on the 28th of March, the Commons, on the 26th of March, 1723, order, that the Attorney General do appoint Counſel, learned in the law, to produce and manage the evidence to make out the allegations of the Bill †.

24. On the 29th of March, 1723, the Biſhop of Rocheſter deſires, by petition, the directions of the Houſe of Lords, for his conduct in relation to the Bill depending againſt him in the Houſe of Commons, as he finds, " That, by a ſtanding order of their Lord- " ſhips, of the 20th of January, 1673, no Lord may appear by " Counſel before the Houſe of Commons, to anſwer any accuſation " there."—The queſtion being put, " That the Lord Biſhop of " Rocheſter, being a Lord of Parliament, ought not to anſwer, or " make his defence, by Counſel, or otherwiſe, in the Houſe of " Commons, to any Bill or accuſation there depending;" it paſſed in the negative ‡; and then leave is given to the Biſhop to make

Bills.—A ſimilar proceeding is had with reſpect to the Biſhop of Rocheſter, when the Bill againſt him is preſented, on the 22d of March. On the 23d of March, Counſel is allowed to Kelly upon his petition.

* On the 25th of March, 1723, Mr. Speaker acquaints the Houſe, that he had received a letter from the Biſhop of Rocheſter, " That his Lordſhip had received a copy of " the Bill, and hoped he ſhould be allowed " Counſel, and Solicitors, to aſſiſt him in the " making his defence."—Counſel and Solicitors are allowed.

† See the proceeding on the ſecond reading of the Bill, on the 28th of March, in the Houſe of Commons; and in the Houſe of Lords on the 27th of April, where Plunket was preſent at the Bar; and the proceedings in the Houſe of Commons, on the ſecond reading of the Bill againſt Kelly on the 1ſt and 2d of April.—Kelly, having preſented a petition, deſiring to be heard againſt the Bill relating to him, is brought from the Tower to the door of the Houſe of Commons, where he is received by the Serjeant, and brought to the Bar; and the Serjeant ſtands by Kelly with the Mace in his hand, reſting it on the floor all the while.—The Bill is read to the priſoner and Counſel at the Bar; and, when the proceeding is over, and the Counſel are withdrawn, it is read a ſecond time, on the 2d of April, and committed.

‡ See the proteſt upon this queſtion.

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his defence in the Houſe of Commons in perſon, or by Counſel, if he ſhall think fit *.

25. On the 29th of April, 1723, the Bill againſt Plunket is read a third time in the Houſe of Lords, and paſſed †.

26. On the 6th of May, 1723, the Bill for inflicting certain pains and penalties againſt the Biſhop of Rocheſter, is read a ſecond time in the Houſe of Lords.—The Biſhop is brought to the Bar by the Black Rod, from time to time, whilſt the Bill is depending ‡.

27. On the 20th of March, 1728, a Bill is ordered in the Houſe of Commons for diſabling Thomas Bambridge from holding or executing the office of Warden of the Fleet, or from having any authority relating thereto §.—On the 12th of April, 1729, Bam-

* The Biſhop, however, by a letter to the Speaker, on the 4th of April, declines availing himſelf of this permiſſion; and the Bill is read a ſecond time on that day, the evidence produced, and the Bill ordered to be committed.

† See the proteſt upon this queſtion.—Before the Bill paſſed, a queſtion was put to the Judges, "Whether, if Plunket, after the paſſing of the Bill, ſhall be indicted for the treaſons with which he ſtands charged in this Bill, he can plead this Act in bar of ſuch indictment?" to which the Judges give their unanimous opinion, "That, if the Bill ſhould paſs into a law, he may plead the ſame in bar of ſuch indictment."

‡ See the further proceedings in the Houſe of Lords, and the evidence produced in ſupport of and againſt this Bill, on the 6th, 7th, 8th, 9th, 10th, 11th, and 13th of May.—When the evidence is cloſed, the Bill is read a ſecond time—not committed—but ordered to be read the third time on the 15th of May.—See the proteſt on the queſtion, That the Bill do paſs.—On the 11th of May, Biſhop Atterbury made a very excellent ſpeech at the Bar againſt the Bill. An authentic copy of it is publiſhed in p. 105 of the 2d volume of a work, intitled, "The Epiſtolary Correſpondence, Speeches, &c. of Biſhop Atterbury," printed in 1783; in which ſpeech he poſitively denies the facts which are charged againſt him as the foundation of the Bill.—But ſee the note to the 1ſt vol. of that work, p. 147, et ſubſ.—He was baniſhed by this Bill, and died at Paris in February, 1731.

§ This Bill was grounded upon a report made from a Committee appointed to enquire into the ſtate of the gaols; which report is entered in the Journal.—See in the State Trials, Vol. IX. p. 145, the trial of Bambridge at the Old Bailey, in May, 1729, for the murther of one of his priſoners, by hard and cruel treatment; and in p. 152, the proceedings on an appeal for the ſame crime.

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bridge petitions againſt the Bill, and deſires to be heard.—This petition is referred * to the Committee on the Bill, with leave for him to be heard by himſelf or his Counſel there.

28. Whilſt the former Bill is depending in the Houſe of Lords, the Lords, on the 5th of May, 1729, order in another Bill, for empowering his Majeſty to grant the office of Warden of the Fleet to another perſon, and to incapacitate Bambridge from enjoying that or any other office whatſoever †.

29. When the Bill for diſabling Bambridge is carried up to the Houſe of Lords, the Lords, on the 25th of April, 1729, appoint a Committee to ſearch precedents of proceedings on Bills of the like nature.—They report on the 26th; and a Conference is deſired with the Houſe of Commons, for the purpoſe of knowing the grounds on which they proceeded to paſs the Bill ‡.

30. On the 25th of February, 1731, after reading the report from the Committee appointed to enquire into the affairs of the Charitable Corporation, the Houſe order in a Bill to compel the appearance of George Robinſon; and a Bill to compel John Thompſon to ſurrender himſelf by a day certain §.

31. On

* This proceeding was informal, as the petition was againſt the whole Bill, and not againſt particular parts or clauſes in it.—The hearing ſhould have, therefore, been at the Bar, on the ſecond reading, and not at the Committee.—See, the 16th of April, 1729, the Speaker's Warrants for bringing up perſons to be witneſſes.—The Committee report on the 18th.

† This Bill paſſes the Lords, and is ſent down to the Commons on the 7th of May; on the 9th of May, 1729, Bambridge preſents a petition to the Houſe of Commons, complaining of this hardſhip, of two Bills, for the ſame offence, ſubſiſting againſt him at the ſame time.—This petition is alſo referred to the Committee on the Bill from the Lords, with leave for Bambridge to be heard by Counſel.

‡ On the 30th of April, 1729, the Lords direct Counſel to be heard for the Bill, and the Attorney General to have notice of this order.—See the proceeding on the ſecond reading, on the 2d and 3d of May.

§ On the 7th of March, theſe Bills are both referred to the ſame Committee, with an inſtruction, "That the ſaid Committee do alter and make both the ſaid Bills into one Bill."—This Bill paſſes; and on the 12th of May,

31. On the 8th of May, 1732, the Houſe order in a Bill * for reſtraining Sir Robert Sutton, Sir Archibald Grant, and ſeveral other perſons, from going out of the kingdom for a limited time, and for preventing the alienating their eſtates or effects.

32. On the 1ſt of April, 1737, after conſidering a report from a Committee of Examinations, in relation to the outrage and riot in Scotland, in which Captain Porteous was murthered, the Lords order, That a Bill be brought in, "to diſable Alexander Wilſon, Pro-"voſt of Edinburgh, from taking, holding, or enjoying any office "of magiſtracy in the ſaid city, or elſewhere in Great Britain, "and for impriſoning him for a certain time;" and that the Judges do prepare the ſaid Bill †.

33. On the 3d of June, 1737, the Lords ſend down a Bill for the more effectual bringing to juſtice any perſons concerned in the murther of Captain Porteous, and puniſhing ſuch as ſhall knowingly conceal any of the offenders; which paſſes the Houſe of Commons on the 16th of June.

34. On the 25th of April, 1746, a Bill is ordered in the Houſe of Commons, for calling any ſuſpected perſon or perſons, whoſe eſtates or principal reſidence are in Scotland, to appear at Edinburgh, or where it ſhall be judged expedient, to find bail for their

neither Robinſon or Thompſon having ſurrendered, the Chancellor of the Exchequer acquaints the Houſe, from his Majeſty, "That "they being now, by the ſaid Act, adjudged "guilty of felony, his Majeſty gives leave "that all forfeitures, accruing thereby, be "diſpoſed of as the Parliament ſhall think "proper."

* This Bill alſo aroſe out of the report from the Committee on the affairs of the Charitable Corporation; in the management of which theſe gentlemen, as Directors, had appeared to be guilty of notorious breaches of truſt.

† See the proceedings upon this Bill in the Lords Journal on the 1ſt, 4th, and 5th of April, and the 3d of May; and in the Commons Journals of the 16th, 17th, and 18th of May, and the 1ſt of June, &c. 1737.—On the 7th of April, Wilſon, who had been ordered by the Lords into the cuſtody of the Black Rod, was admitted to bail.—See the form of the bail-bond in the Lords Journal, on the 19th of April.

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good behaviour. This Bill paſſes both Houſes, and receives the Royal Aſſent on the 4th of June.

35. On the 6th of March, 1758, Lady Ferrers preſents a petition to the Houſe of Lords, complaining of cruel treatment from her huſband Earl Ferrers, and praying for a Bill of ſeparation *.—On the 10th of March, this petition is referred to the examination of a Committee, who make a report, on the 20th, of all the circumſtances; when leave is given to bring in a Bill of ſeparation †.

* It has been obſerved on the inſertion of this caſe, as well as of the former of Lady Angleſea, N° 13. "That they are neither of "them properly to be called "Bills of Pains "and Penalties." The reaſon for their being inſerted here is, That they are *Privilegia*, or Laws made in the inſtance of particular perſons; which, though they may have, for their firſt and principal object, the protection of the Lady, and her ſecurity from inſult and cruel treatment, do, by their operation, inflict on the huſband the penalty, of being compelled to live ſeparated from his wife.

† This Bill paſſed into a law.—The protection of each Houſe was granted to the Counteſs Ferrers, during the pendency of the Bill. See Lord Ferrers's caſe, as reported in Judge Foſter's Reports, p. 138; and an account of his behaviour at the place of his execution for murther, publiſhed, by the authority of the Sheriffs, in the Appendix to the State Trials, Vol. X. p. 213.

# APPENDIX
## TO THE
# FOURTH VOLUME.

## APPENDIX, N° I. (p. 11.)

*Lunæ 15° die Julii 1717.*

*Reaſons of Lords and Commons, on Queſtion of paſſing a Bill Nem. Con.*

A MESSAGE from the Lords, by Mr. Juſtice Dormer, and Mr. Juſtice Eyre:

Mr. Speaker,

The Lords have accepted and paſſed a Bill, intituled, "An "Act for the King's moſt gracious, general, and free par- "don," Nemine contradicente; and have ſent it down to this Houſe.

And then the Meſſengers withdrew.

The Bill was once read.

And the Bill being ſigned by his Majeſty, all the Members ſat uncovered while it was read.

Reſolved, Nemine contradicente, That the Bill do paſs.

Ordered, That Mr. Attorney General do carry the Bill to the Lords, and acquaint them, That this Houſe hath agreed to the ſame.

Ordered, That a Committee be appointed to ſearch Precedents, and to prepare reaſons to be offered to the Lords at a Conference, upon the meſſage from their Lordſhips to this Houſe, with the Bill, intituled, " An Act for the King's moſt gracious, general, " and free pardon:"

And it is referred to Mr. Chancellor of the Duchy, Mr. Comptroller, &c. &c. &c. or any three of them: and they are to withdraw immediately into the Speaker's Chamber; and to make their report with all convenient ſpeed.

Mr. Chancellor of the Duchy reported from the ſaid Committee, That they had ſearched Precedents, and prepared reaſons to be offered to the Lords at the ſaid Conference, which he read in his place, and afterwards delivered in at the Clerk's Table: where they were read; and agreed unto by the Houſe; and are as follow; viz

The Commons, having this day received a meſſage from your Lordſhips, in theſe words, " That the Lords have accepted and " paſſed a Bill, intituled, An Act for the King's moſt gracious, ge- " neral, and free pardon, Nemine contradicente; and have ſent it " down to this Houſe;" have deſired this Conference, to acquaint your Lordſhips, That this meſſage is not according to the uſual way of tranſmitting Bills between the two Houſes; for that neither Houſe does acquaint the other by what number any Bill before them doth paſs; and the introducing any alteration in the uſual method of proceedings may be of dangerous conſequence.

Ordered, That a Conference be deſired with the Lords upon the ſubject-matter of their Lordſhips meſſage to this Houſe, with the Bill, intituled, " An Act for the King's moſt gracious, general, and free pardon."

Ordered,

Ordered, That Mr. Chancellor of the Duchy do go to the Lords, and deſire the ſaid Conference.

Mr. Chancellor of the Duchy reported to the Houſe, That he had, according to their order, been at the Lords, and deſired the ſaid Conference; and that the Lords do agree to a Conference, and appoint the ſame immediately, in the Painted Chamber.

Ordered, That the Committee, who were appointed to draw up reaſons to be offered at the ſaid Conference, do manage the Conference.

And the Managers went to the Conference.

And being returned;

Mr. Chancellor of the Duchy reported, That the Managers had been at the Conference, and delivered the reaſons directed by the Houſe to the Lords.

A meſſage from the Lords, by Sir Thomas Grey, and Mr. Bennet:

Mr. Speaker,

We are commanded by the Lords to acquaint this Houſe, That the Lords deſire a preſent Conference with this Houſe, in the Painted Chamber, upon the ſubject-matter of the laſt Conference.

And then the Meſſengers withdrew.

Reſolved, That the Houſe doth agree to meet the Lords at a preſent Conference.

And the Meſſengers were called in again, and Mr. Speaker acquainted them therewith.

Ordered, That the Managers who managed the laſt Conference do manage this Conference.

And the Managers went to the Conference.

And being returned;

Mr. Chancellor of the Duchy reported, That the Managers appointed

pointed had met the Lords at the Conference; and that the ſame was managed, on the part of the Lords, by the Lord Privy Seal; who acquainted the Managers, That their Lordſhips, in order to preſerve a good correſpondence with the Houſe of Commons, which they ſhall always endeavour to do as far as lies in their power, have deſired this Conference upon the ſubject-matter of the laſt Conference; and have commanded us to acquaint you, That the Lords, upon peruſal of their Journal of the 20th of May, 1690, do find, that the like meſſage was then ſent down from the Lords to the Commons, upon the ſame occaſion, with the words "Nemine contradicente," to which the Commons now ſeem to object; and their Lordſhips do not find, that any notice was then taken thereof by the Commons, nor at any other time; although the ſaid meſſage was ſent to the Commons on the ſaid 20th day of May, and the Bill was not returned till the 23d of the ſame month, and the Houſe of Lords continued ſitting on the intermediate days: and the Lords are of opinion, that, the paſſing of Bills of this nature differing ſo materially in many circumſtances from the forms of paſſing other Bills, no argument can be drawn from thoſe forms to ſupport the objection made by the Commons to the meſſage ſent by the Lords, with the Bill, intituled, "An Act for the King's moſt gracious, general, and free par-" don."

Ordered, That the ſaid Report be now taken into conſideration.

The ſaid Report was read.

Ordered, That the Committee who managed the laſt Conference do ſearch precedents, and prepare reaſons to be offered to the Lords at a Conference, upon the ſubject-matter of the laſt Conference: and they are to withdraw immediately into the Speaker's Chamber; and make their report with all convenient ſpeed.

Mr. Chancellor of the Duchy reported from the ſaid Committee, That they had ſearched precedents, and prepared reaſons

to be offered at the ſaid Conference; which they had directed him to report to the Houſe; and he read the ſame in his place; and afterwards delivered them in at the Clerk's table: Where they were read; and agreed unto by the Houſe; and are as follow; viz.

The Commons have taken into conſideration the reaſons communicated to them by your Lordſhips at the laſt Conference; and, being deſirous, on all occaſions, to preſerve a good correſpondence with your Lordſhips, have commanded us to acquaint your Lordſhips, That they find, on peruſal of their Journal of the 20th of May 1690, That no ſuch meſſage was delivered to the Commons on that day, as is mentioned in your Lordſhips reaſons: But they find, that the like meſſage with that communicated by your Lordſhips this day was delivered to the Commons on the 22d of May, 1690: Whereupon, the Commons, taking exception to the words "Nemine contradicente" contained in the ſaid meſſage, appointed a Committee to ſearch precedents, and to prepare reaſons to be offered at a Conference with your Lordſhips; and the ſame being prepared, they, on the 23d of May, 1690, did reſolve, That a Conference ſhould be deſired with your Lordſhips on the ſaid meſſage; and did immediately order one of their Members to go to your Lordſhips, and deſire the ſaid Conference.

That the Commons conceive, that the different form of paſſing Bills of this nature doth very much ſtrengthen the objection now made by the Commons; for which reaſons the Commons do inſiſt on the reaſons delivered to your Lordſhips at the laſt Conference.

A meſſage is then ordered to be ſent to the Lords to deſire another Conference on this ſubject; which meſſage is not delivered, as the King comes and prorogues the Parliament.

APPENDIX,

# APPENDIX, N° 2. (p. 39.)

*Martis, 13° die Auguſti* 1689.

*Report concerning the Rules of the Houſe in Conferences.*

MR. Solicitor General reports from the Committee, to whom it was referred, to prepare reaſons for a Conference with the Lords, for the ſettling the method of proceedings between the two Houſes, upon Conferences, and Free Conferences; That the Committee had prepared the ſame accordingly; the which he read in his place; and afterwards delivered the ſame in at the Clerk's table: Where the ſame were read; and are as followeth:

The Commons have deſired this Conference, upon the ſubject-matter of the meſſage, ſent by your Lordſhips the one-and-thirtieth of July laſt, to acquaint them, That your Lordſhips had adhered to your amendments, propoſed to be made to the Bill, for reverſing two judgments given in the Court of King's Bench againſt Titus Oates, Clerk.

The Commons have commanded us to repreſent briefly to your Lordſhips, how the caſe ſtands between the two Houſes, in relation to this Bill.

Writs of Error were brought before your Lordſhips, in order to reverſe the judgments given againſt Oates upon two indictments, for perjury: By which judgments, "He was to be diveſted of his canonical habits; and to continue ſo diveſted during his life: He was yearly, during his life, to be ſet in the pillory ſeveral times, at divers public places: He was to be impriſoned during life: was to be whipped from Aldgate to Newgate, one day; and from thence to Tyburn, another day: And was fined one thouſand marks."

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Theſe judgments your Lordſhips thought fit to affirm.

The precedents being of ſuch dangerous conſequence to every Engliſh ſubject, the Commons thought themſelves under a neceſſity of ſending up a Bill to your Lordſhips, in order to have theſe judgments reverſed by Act of Parliament: In which Bill, the judgments are called erroneous, illegal, cruel, and of evil example to future ages.

Your Lordſhips, by a meſſage, the thirteenth day of July, did acquaint the Commons, That you had agreed to the Bill, with amendments.

By the amendments, the words "illegal, cruel, and of ill example to future ages," are omitted: And a clauſe is added, That ſuch exceſſive puniſhments ſhall not be inflicted for the future.

The words which concern the annulling of the judgments given by the Houſe of Peers upon the Writs of Error, are omitted: And a clauſe is added, That till the Matters for which Oates was convicted be heard and determined in Parliament, he ſhould not be received for a witneſs, or to give evidence, in any court or cauſe.

The Commons, at a Conference, the twenty-ſecond of July, delivered their reaſons, why they could not agree to theſe amendments.

Your Lordſhips delivered your reaſons for inſiſting upon the amendments, at the Conference, the twenty-ſixth of July.

The reaſons given by your Lordſhips not being ſatisfactory to the Commons, a Free Conference was deſired, and had the twenty-ninth of July: At which it was owned by your Lordſhips, that the whole Houſe of Peers was ſatisfied, that the judgments given in the King's Bench were erroneous and extravagant; and the puniſhment ſo exorbitant, as ought not to be inflicted on an Engliſh ſubject; and alſo, that you would not enter into a debate with them, whether an erroneous judgment muſt

not neceſſarily be illegal: But yet your Lordſhips did declare, That upon the Writs of Error, you had choſen to affirm the judgments, rather than Oates ſhould be reſtored to his teſtimony; which muſt have been the conſequence of the reverſal.

After your Lordſhips had owned ſo much at the Conference, the Commons were extremely ſurprized to receive a meſſage, That you had adhered to your amendments;

Firſt, Becauſe by this vote of adhering generally, your Lordſhips do depart from what was yielded to upon the Free Conference; at which (as the Commons did apprehend) ſome of the amendments were waved by your Lordſhips.

Secondly, The Commons find cauſe to be diſſatisfied with the meſſage;

Becauſe your Lordſhips have proceeded to adhere upon the firſt Free Conference: Which they look upon to be irregular; at leaſt to be contrary to the ordinary courſe of proceedings between the two Houſes (eſpecially if ſuch adhering ſhould be looked upon as concluſive); it being well known to your Lordſhips, That it is uſual to have two Free Conferences, or more, before either Houſe proceeds to adhere. And, as it is the courſe of Parliaments, ſo it is ſuitable to the nature of the things, that there ſhould be no adhering till after two Free Conferences at the leaſt; becauſe, before that time, each Houſe is not fully poſſeſſed of the reaſons, upon which the other does proceed; nor have the Houſes had the full opportunity of making replies to one another's arguments: And, to adhere ſooner, is to exclude all poſſibility of offering expedients.

This method, of adhering ſo ſuddenly and unexpectedly, draws very ill conſequences after it, as appears by what has happened this ſeſſion; the additional Poll Bill having been loſt, to the great prejudice of the Crown, by your Lordſhips adhering upon the Firſt Free Conference. The Bill of Rights (in which your

Lordſhips,

Lordſhips, as well as the Commons, are highly concerned) by this quick way of adhering, now put in uſe by your Lordſhips, is in danger to be loſt: And no inconveniencies can be greater than what muſt follow the loſs of this Bill, if your Lordſhips ſhould take yourſelves to be concluded, by adhering upon the firſt Free Conference.

For the Commons think it is not to be denied, That in proceedings in your judicial capacity upon Writs of Error, your Lordſhips are as much bound to give judgment upon the record, according to the ſtrict rules of law, as any inferior Court whatſoever; and ought not to enter into the conſideration of perſons, or collateral reſpects.

That, for your Lordſhips to aſſume a diſcretionary power to affirm a judgment, though at the ſame time you agree it to be erroneous, is to aſſume a power to make law, inſtead of judging according to the rules of law.

That, when the Commons ſend up a Bill to your Lordſhips, in order to prevent the miſchiefs of ſuch deſtructive precedents, for your Lordſhips to refuſe to reverſe theſe Judgments (though confeſſed to to be erroneous) unleſs upon ſuch terms as you are pleaſed to impoſe, and to which the Commons cannot in reaſon agree, is to leave the kingdom without redreſs againſt acknowledged wrongs.

It is recorded, to the honour of our noble anceſtors, That they declared they would not change the laws: And the Commons hope you will purſue their ſteps; and not, by affirming erroneous judgments, go about to make that law, which was not ſo before; and, by inſiſting on collateral terms before you will reverſe thoſe judgments in the legiſlative way, take to yourſelves, in effect, the whole power of the legiſlature; which is, not only to change the law, but to ſubvert the conſtitution of the Government, if your Lordſhips ſhould inſiſt upon ſuch a way of proceeding, and the Commons ſhould acquieſce in it.

The Commons do therefore hope your Lordſhips will not inſiſt upon this unuſual method of adhering; which manifeſtly tends to the interruption of a good correſpondence between the two Houſes (the Lords and Commons having frequently agreed upon the ſecond and third Free Conference, when they could not upon the firſt), eſpecially at ſo unſeaſonable a time, when an entire agreement between the two Houſes is of ſuch abſolute neceſſity for the eſtabliſhment of the government, and for the peace and ſafety of the kingdom.

On receiving a meſſage from the Commons on the 13th of Auguſt, to deſire a Conference on this ſubject, the Lords appoint a Committee to ſee, "What precedents may be found of granting "Conferences, after adhering." It does not appear, that this Commitee make any report.

APPENDIX,

# APPENDIX, N° 3. (p. 40, and 278.)

*Mercurii, 13° die Januarii, 1691.*

*Mr. Montagu's Report of what paſſed at Conferences touching an Amendment made by the Lords to a Bill for regulating Trials in Caſes of Treaſon; and alſo a Report made to the Houſe of Lords, on the 18th of January, 1691, from a Committee to inſpect Commiſſions for Lords High Stewards, &c.*

MR. Montagu, according to the order of the day, reported the two Free Conferences with the Lords upon the Bill for regulating of trials, in caſes of Treaſon; as followeth:

That the Members of this Houſe, who were commanded to manage the Free Conference with the Lords, on Tueſday, the 5th of this inſtant January, did attend their Lordſhips:

And that the Conference was begun by the Managers of this Houſe: Who did acquaint the Lords, That the Commons had deſired this Free Conference, in order to a good correſpondence with their Lordſhips.

That the inclinations which the Commons have to continue that good correſpondence, which has yet been happily maintained between the two Houſes, was ſufficiently expreſſed by their proceedings in the whole progreſs of the Bill.

That this Bill was begun by the Commons, for the equal advantage of ſuch Lords or Commons, who had the misfortune to be accuſed of treaſon or miſpriſion of treaſon.

That, when it was firſt returned from their Lordſhips, it came down with very many amendments: And the Commons were ſo willing to comply with the deſires of their Lordſhips, and to give the Bill a ſpeedy paſſage, that they agreed to all thoſe amend-

ments,

ments, except the two laſt; though ſome of them were of a very nice nature; and related to things of which the Commons have ever been moſt tender.

That, at the firſt Conference, the Commons gave their Lordſhips the reaſons that induced them to make thoſe two amendments: Which did ſo far ſatisfy their Lordſhips, that they did agree to their firſt amendment propoſed by this Houſe, though they did inſiſt upon this other, for which they delivered their reaſons at the ſecond Conference.

That the reaſons had been ſolemnly and deliberately conſidered by the Commons: But they had not found them ſufficient to convince them: And they did ſtill diſagree with the Lords in the clauſe marked A *; and did inſiſt upon that diſagreement.

And that your Managers told them, it was very unfortunate, that no Bill, for the relief of the ſubject in theſe caſes, had been tendered, for many years laſt paſt, but either this clauſe, or ſomething of the like nature, had unhappily clogged it, and been the occaſion of loſing it: And that, as this was never thought reaſonable to be admitted formerly, upon any account, ſo neither can the Commons now conſent to ſo great an alteration of our Conſtitution as this would introduce.

* This clauſe (A.) to which the Commons now diſagreed, was afterwards conſented to by them on the 17th of January, 1695, and makes part of the Bill, which paſſed in that year, "for regulating trials in caſes of treaſon." 7th W. III. ch. 3.—It directs, "That upon the trial of any Peer or Peereſs "for High Treaſon or Miſpriſion of Treaſon, "all the Peers, who have a right to ſit and "vote in Parliament, ſhall be duly ſummoned." On the 10th of January, 1689, the Earl of Bridgwater reported from the Committee of Privileges, their opinion, "That no Peer ought to be tried in time of "Parliament, but by the Houſe of Peers: "and that, at the trial of any Peer out of "Parliament, it ſhall be lawful for all the "Peers of England to be at ſuch trial." This report is conſidered on the 14th of January, when the Lords reſolve "That "it is the antient right of the Peers of "England, to be tried only in full Parliament, for any capital offences." Againſt this reſolution there is a proteſt.—And on the 17th of January, it is declared, "That "the order made on the 14th ſhall not be "underſtood or conſtrued to extend to any "appeal, of murder or other felony, to be "brought againſt any Peer." It has happened, that no Peer has been tried, ſince that time, for any capital offence, except in full Parliament.—See before, p. 277, N° 2, and the note.

That ſuch an alteration is far beyond the intent and deſign which the Commons had in preparing this Bill. They were deſirous that all men ſhould have a fair and equal way of making their innocency manifeſt: But they did not deſign to ſubvert the eſſence and conſtitution of the Courts: They did not intend to diſable the Crown in one of its moſt neceſſary prerogatives; or to place a judicature in other hands than thoſe to whom the laws of England, and the cuſtom of the realm, have committed it.

But that the clauſe, now in diſpute, ſtrikes at no leſs than this; and, in conſequence, at the alteration of the Government of England.

That the Government of England is monarchical: And the monarch has the power of conſtituting courts and officers for adminiſtration of juſtice. Though they are to proceed according to known rules and limitations of law, the judges are conſtituted by his commiſſion; the ſheriffs are of his nomination and appointment, who are to return the panel of jurors who are to paſs on the lives of the Commoners: And, in like manner, it is the prerogative of the Crown to conſtitute a Lord High Steward; who, by his Serjeant at Arms, does ſummon a competent number of Peers to be tryers of their Lordſhips.

But that this clauſe would erect a judicature independent on the Crown.

That experience of paſt times has not contradicted that opinion of the honour and integrity of the Lords, which the Commons have received.

That their deſign in paſſing this Bill was to prevent thoſe abuſes in trials for treaſon, in inferior Courts, for the future, by means of which, during the violence of late reigns, they had obſerved divers had loſt their lives.

That the things to which the Bill extends are of ſuch a nature, that, except only in one inſtance, that is, the time of the delivery of the copy of the panel (for it was agreed, even in Lord Ruſſell's caſe,

caſe, that the ſubject had the right to have the copy of the panel), the Lords have an equal benefit with the Commons.

That the Commons do not obſerve, that the clauſe, ſent down by the Lords, does relate to the like grounds of complaint. No inſtance can be given of any Peer who ſuffered during the late reigns, from whence a juſt cauſe of objection might ariſe to the preſent method of trying Peers.

That the only two perſons proſecuted came off, though purſued with great violence; the one *, becauſe the Grand Jury could not be prevailed on to find the Bill: The other † was acquitted upon his trial, by the juſtice of his Peers.

That, by all the circumſtances of that trial of the Lord Delamere, it is manifeſt, that, if there were any unfairneſs in that method of trial, it then would have appeared. The violence of thoſe times was ſuch, that the Commons were not protected by that innocency which has ſince been declared in Parliament: Yet then the Lord Delamere was acquitted, by the honour and the juſtice of his Peers: And it may ſeem ſtrange to future ages, that the Commons ſhould be contented, that the method of trials ſhould be continued, which was not ſufficient to protect their

* This was the firſt Earl of Shaftſbury.—See the proceedings on this occaſion, where the Grand Jury returned the Bill *ignoramus*, on the 24th of November, 1681; in the State Trials, Vol. III. N° 108. p. 414—with Sir John Hawles's remarks on this Grand Jury, and their conduct, in the State Trials, Vol. IV. p. 183.—There is a character of this Earl of Shaftſbury, which though drawn by one, who was his enemy, appears to be juſtified from the hiſtory of thoſe times. "Shaftſbury in all the revolutions, from 1641, "was famous for turning from ſide to ſide; "ſtill foremoſt in the ſeveral turns of go-"vernment, though ever ſo contrary to "one another. When Chancellor, he was a "bold aſſerter of prerogative. He had "the chief hand in declaring for liberty of "conſcience. He promoted the ſecond "Dutch war. He adviſed ſhutting up the "Exchequer. He juſtified all proceedings "to Parliament. But when the declaration "for liberty of conſcience was recalled, "ſeeing how the ſtream ran, he dextrouſly "tacked about, and cloſed in entirely with "the republican party."

*Life of James* II. *written by himſelf. M'Pherſon's St. Papers, Vol.* I. *p.* 70.

† Lord Delamere; tried in the Court of the Lord High Steward, by Lord Jeffries, in 1685.—See the proceedings on this trial in the 4th Vol. State Trials, N° 137, p. 210.

innocency

innocency; and their Lordſhips alter that which has proved a bulwark to their lives.

That the Commons alſo think the clauſe to be of a different nature from the Bill; becauſe the Bill does not make any alteration in the conſtituting of the court, or in the nature of the trial; but the Commons apprehend, that this is done by the clauſe.

That the court is no longer conſtituted by the precept of the Lord High Steward, who receives his commiſſion from the Crown: but the whole order of Peers have a right to make up the court: and all the friends, the relations, and the accomplices of the perſon, are to be his tryers.

But that there is another great alteration in the conſtitution of the court, as the clauſe is penned: this method preſcribed by the clauſe, is for the trial of every Peer: and every Peer, who has a right to ſit and vote in Parliament, is to be ſummoned; and may appear and vote.

Now, it is agreed by the moſt learned authors, that the Lords Spiritual are Peers:

That this is certain; whoever would go about to defend the contrary opinion, would find it difficult to anſwer the ſeveral records of Parliament, and other authorities, where this point is aſſerted:

The well-known claim in Parliament of Archbiſhop Stafford, in the reign of Edward the Third:

The famous proteſtation 11 Rich. II. when the Biſhops thought fit to abſent themſelves from Parliament, becauſe of matters of blood to be agitated there; wherein their right of Peerage is directly aſſerted: and this proteſtation being inrolled at the deſire of the King, and with the conſent of the Lords and Commons, ſeems to be of the nature of an Act of Parliament.

And if the law books may come in for authorities in ſuch a

point, there are caſes where the pleas of Biſhops, as Peers, have been judicially allowed.

So that this clauſe does directly let in the Lords Spiritual to try and be tried, as other Peers, who are noble by deſcent. Not that the Commons are diſſatisfied with this, if this were the only matter: the Lords Spiritual, in all probability, by their learning and integrity, would greatly aſſiſt at the trial of Peers; and the Commons are well enough diſpoſed to let in thoſe noble Prelates to any privileges, in point of trials, which ſhall be propoſed by the Houſe of Peers: but that this is urged to make good the poſition laid down before, That, by this clauſe, the conſtitution of the Court is quite altered; it having been taken for law, that the Lords Spiritual are not to be tried as other Peers, or to be preſent, or vote at the trial of any other Peers, at leaſt out of Parliament: for, as to their right in Parliament, how far they are reſtrained by their Canons "agitare judicium," how far thoſe Canons have been received in England, and what the uſage of Parliaments has been, is not the preſent buſineſs.

That, had this Bill come firſt down from the Lords, and the Commons had added a clauſe, That no Commoner ſhould be tried for treaſon but before all the twelve Judges, and by a Jury of twenty-four perſons; and to have taken away all challenges for conſanguinity (which, if it be conſidered, is ſomewhat of the nature of the Lords' clauſe, though it does not go ſo far); that if the Lords had thought fit to have uſed the ſame reaſon for diſagreeing to ſuch a clauſe, as the Commons had done in the preſent caſe, "That it was different from the deſign of the Bill;" that the ſame reaſons which the Commons received from the Lords at the laſt Conference, if they had been delivered by the Commons, would not have been convincing to their Lordſhips.

That the Commons obſerved, That the Lords, in the clauſe, or in their reaſons, have not ſtated any cauſe of objection to the preſent method of their trials: and therefore the Commons wonder, that

that the Lords (as they expreſſed themſelves in their reaſons) ſhould conceive, that they were diſtinguiſhed, ſo as to be more expoſed in their trials than the meaneſt ſubject; ſince the Commons do not find but that they enjoy this great and high privilege (upon which ſo great a value has been juſtly put) as fully as ever any of their noble anceſtors did.

That it is by this privilege that the body of the Peers has been preſerved ſo long: if any Lord, at any time, ſhould be diſpoſed to expoſe himſelf in defence of the common liberties of the people, the Commons are a ſecurity to him againſt being oppreſſed by falſe accuſations: twelve of them muſt agree to find a Bill, before he can be indicted: and that Bill cannot be found, but upon the oaths of two credible witneſſes.

That the Commons look upon the method of trials, which the Lords would alter, to have been as ancient as the conſtitution of the Government:

That it appears in the year books, to have been practiſed in the firſt year of Henry the Fourth; and to have been well known at that time.

That indeed, it cannot be ſuppoſed to have been an innovation then: the Lords, who had juſt before depoſed King Richard II. were too great to ſuffer ſuch an innovation; and Henry the IVth's title was not ſufficiently eſtabliſhed to attempt it.

That the reaſon, why no elder inſtances of proceedings before the Lord High Steward are to be found, is this;—that this very Henry the IVth, when Duke of Lancaſter, was the laſt High Steward who ever had any fixed intereſt in the office; ſo that, the office being ſo long ſince ceaſed, all the records are loſt; and the very nature and power of the office, except in this inſtance of trying of Peers, and determining claims at Coronations, is loſt: But, ſince that time, the High Steward being only pro unica vice, the proceedings are commonly tranſmitted into other courts; and ſo come to be found.

That the Commons obſerved, That, if there be any objection

to that method of trying of Peers, it muſt be founded on a ſuppoſition of partiality and unfairneſs in conſtituting of a High Steward, or in the High Steward himſelf, and the Peers ſummoned by him: and the Commons are unwilling to enter into ſuch kind of ſuppoſals.

That, as to the partial conſtituting of a High Steward, if that may be ſuppoſed, it is an objection to the conſtitution, which intruſts the Crown with the adminiſtration of juſtice: that ſuppoſal may as well extend to the conſtituting the Judges, and the Sheriffs, and every other part of the adminiſtration: and that if, upon ſuch a ſuppoſal or diſtruſt, the remedy muſt be, to take that part of the adminiſtration out of the Crown (as is done in this caſe), the ſame reaſon muſt carry the thing ſo far, that the nature of the government will be altered.

As to the partiality of the Lord High Steward, and the Peers, the Commons are unwilling to ſuppoſe, that it is poſſible that twelve Peers ſhould be ever found (for that number muſt agree, or the perſon accuſed is ſafe) who can ſo far forget their honour, and the noble order they are of, as, for revenge or intereſt, to ſacrifice an innocent perſon.

But that, if the Lords will ſuppoſe that ſuch a number of Peers may be capable of being engaged in ſo ill and ſo diſhonourable things, then the Commons think themſelves excuſed, if they ſuppoſe, that other paſſions and motives may alſo prevail upon the Peers; ſuch as pity in friends, partiality in relations, and the conſideration of their own ſafety in the caſe of accomplices: and that moſt men, eſpecially Engliſhmen, enter unwilling into matters of blood.

That the moſt indifferent Peers will be moſt likely to abſent themſelves, either from a conſideration of diſſatisfying the Crown on the one hand, or drawing on themſelves the miſchiefs of a breach with the family of the perſon accuſed on the other (for it is to be obſerved, that a reſtitution of the family follows generally

in a ſhort time); or, at leaſt, the love of ſecurity and care of not engaging too far: for theſe trials (which, for the moſt part, happen in unquiet and troubleſome times) will keep indifferent men away.

But that the care for a friend will not fail to bring friends to the trial: the concern to preſerve their family from that ſtain, will bring relations: and, if there be any accomplices, they muſt be ready, for their own ſakes, to acquit the accuſed; and that probably their number muſt be conſiderable in theſe caſes; for it is not to be imagined, that a Lord can enter into thoſe baſe and deteſtable actions, which may be performed by ſingle perſons, ſuch as poiſoning or aſſaſſinating the Prince.

That the treaſons, in which it can be imagined that Lords may be engaged, may be ſuch as ariſe from factions in the ſtate; in which many muſt be engaged: and if ſome accident diſcover ſufficient matter for a charge againſt one of the party, the reſt, who are concealed ſtill, will have as good right to try their confederate, as any indifferent Lord; and no doubt but it is their intereſt to acquit him: and how far, at ſome times, this alone may go towards turning the ſcale of juſtice, may deſerve to be conſidered; eſpecially in times (which may happen hereafter, becauſe they have happened heretofore) when there may be ſeveral titles ſet up to the Crown, and great parties formed.

That this is a law which is to have a perpetual continuance: and that the ſame loyalty, wiſdom, and zeal, which appears now in their Lordſhips, ſhould be derived down to all their poſterity, is a thing rather to be wiſhed than depended upon.

That if, therefore, the clauſe has a tendency towards letting in an impunity for treaſon, the Commons look upon themſelves as juſtified in diſagreeing to it:

For that they think it obvious to every one, of what conſequence it will be to the Conſtitution, if ſuch a body as the Peers,

who

who have already ſuch high privileges of all ſorts, ſhould have impunity for treaſon added; and what that muſt naturally end in.

That the Commons agreed with the Lords, That a good correſpondence between the two Houſes is of neceſſity, for the ſafety, honour, and greatneſs of the nation: and can never think, that it is to be interrupted by their refuſing any thing which may endanger the Conſtitution; aſſuring them, the Commons will never fail in improving the true intereſt of the Lords: But they perſuade themſelves, that the Lords will be of opinion, That to introduce any thing which tends to an impunity for treaſon, is neither the true intereſts of the Crown, the Lords, or the Commons.

THAT the Managers for the Lords, who ſpoke at this Conference, were the Duke of Bolton, the Marquis of Hallifax, the Earls of Pembroke, Mulgrave, Stamford, Nottingham, Rocheſter, and Monmouth.

That the ſubſtance of what was ſaid by the Managers for the Lords was, That the Lords were ſorry to be of any opinion different from the Commons, eſpecially in a clauſe of ſo great importance, which did concern not only their well-being, but their very being: That they had not differed from us in any thing propounded for our ſecurity, and hoped we would have the ſame conſideration for theirs: That nothing was ſo proper for a Parliament as to provide defences for innocency in ill times. Neceſſity, in good prudence, puts us upon it. And though theſe were good times in reſpect of the preſent Government, they may ſay, they are unquiet and unſafe: And what but a good Prince will ever paſs ſuch laws as theſe are? This is the moſt proper time to provide for the ſubject. For a good King would be willing, not only to protect them while he lives, but to provide for their ſecurity after his death.

That

That this concerned not only themſelves; and therefore they would ſpeak the more freely: It is too narrow a conſideration for a Parliament to ſeek only our preſent ends: Our anceſtors had further thoughts: And they did not doubt but we ſhould have ſo too. This clauſe is not for the Lords' ſake alone: There can no good be done, in times of trouble, and invaſion of rights, but by agreement of both Houſes: There muſt be a concurrence of the greateſt part of the Lords, and the greateſt part of the Commons, to maintain the Government of England: There may come a Prince, when we are dead and gone, that may endeavour to invade the liberties of the people: And then the Commons would be glad to have the concurrence of the Lords: And deſired we would conſider in ſuch a caſe, Whether it would not be a great diſcouragement for the Lords to act; unleſs they might be as ſecure, at leaſt, as the Commons: And there may be ſuch Princes. Is it fitting, that part of the Government, which is ſo neceſſary in their concurrence, ſhould be under ſuch terms for their lives, that they dare not oppoſe them with vigour; nor act, becauſe they lie under ſhackles?

That the Lords would do what was juſt, though this clauſe ſhould not paſs: But they would be loth, that thoſe Lords, that are eminent for their public ſervice, ſhould be eminent for their ſufferings for it.

That, in the caſe of impeachments, which are the groans of the people, and for the higheſt crimes, and carry with them a greater ſuppoſition of guilt than any other accuſation, there all the Lords muſt judge: But when there comes a private proſecution, which may proceed from the influence of particular men; then a Lord lies under the hardſhip of being tried by a few Peers, choſen to try him; when all the people may ſigh and wiſh for him: But ſuch a clauſe would do him more good.

That, ſuppoſe an ill Miniſter ſhould apprehend an impeachment in Parliament, what manner of way could that man hope better

better to come off by, than by being tried before a Parliament ſits; where his judges may be choſen ſo partially, as he ſhall come off; and it ſhall be ſaid, no man can legally undergo two trials for the ſame offence.

That this way of trial was not ancienter than Henry the VIIIth. That it was brought in then to take off thoſe that he did not like: That, in his time, the Duke of Buckingham was taken off, in this manner, by Cardinal Wolſey: That Anna Bullein was condemned by her own Father: And afterwards, a party was choſen to condemn the Duke of Somerſet, and the Duke of Northumberland. That the caſe of the Earl of H. 1 H. IV. is no good caſe, nor truly reported; for the Parliament Rolls, 2 H. IV. mention his being beheaded by the rabble in Eſſex.

That this does not alter the Conſtitution any more than as, in ſome ſenſe, every new law may be ſaid to alter the Conſtitution: And the Commons ſay it is altered; becauſe, formerly, it was by a ſet number; and now all muſt appear: That does not ſeem to alter the Conſtitution; for the High Steward now may ſummon them all: The Lord High Steward formerly ſummoned the Court; he ſummons it ſtill: The nature of the Court is not altered by the majus or minus, any more than the King's Bench ceaſes to be the ſame Court, when there are three or four Judges in it.

That though this clauſe did not, as was ſaid, purſue the end of the Bill; yet either Houſe has a power of adding what they think may make it better: And though this is not of a different nature, there have been inſtances of additions of different natures: But this is ſo far from it, that it agrees entirely with it, and is as ſuitable and neceſſary as any part of it.

That the Commons were not well ſatisfied, when the commiſſions of the Judges run durante bene placito: And could it be thought reaſonable, that the Lords, who are the ſupreme judicature, ſhould not ſtay in their lives quamdiu ſe bene geſſerint?

And

And, that though the King does now appoint the ſheriffs, it was not always ſo: and, ſince the Crown has made them, the Commons have this for their ſecurity, That they may challenge thirty-five of the panel, peremptorily; and all the reſt, for cauſe.

But that the judges and ſheriffs are made before the crime committed; ſo that it is impoſſible for the judges or ſheriffs to have a prejudice againſt any man: but the Lord High Steward is appointed after they know the priſoner; and he ſhall be tried according to the humour of the times they are in. There may be Lords inclined one way and the other: but, in this caſe, there is a ſtrong thing joined with this paſſion; which is, their making their own fortunes by ſerving the preſent times.

That, ſince the trial of Peers, in time of Parliament, muſt be by the whole Houſe; where is the inconvenience, that at all times they ſhould be tried as in Parliament? It is a little favour the Lords aſk in this clauſe, conſidering the privilege of Parliament, for three years laſt paſt, has been always ſubſiſting, and is like to continue ſo during this war: ſo that the objection is taken away as to the preſent Government: for they will have the advantage of a parliamentary trial: and poſſibly, in times to come, there may be an inquiſition for what is done now: and it will be well to have the faireſt way of proceeding in that matter.

That, in the caſe of the Lord Delamere, ſeveral Lords were then in town *; and there were a great many of thoſe Lords not choſen: And it is a great queſtion, Whether that noble Lord had come off as he did, if he had not received ſuch notice from the Grand Jury, and every thing had not been made out ſo plain.

* See in the State Trials, Vol. IV. N° 137, p. 210, the names of the Lords ſummoned by Lord Jefferies, appointed Lord High Steward for the trial of Lord Delamere, in 1685; amongſt whom were ſeveral of the great officers of the Crown, and others devoted at that time to King James the IId.—"The Lord High Treaſurer of England," "The Lord Preſident of the Council," "The Lord Steward of the Houſehold," "The Lord Chamberlain of the Houſehold," "The Treaſurer of the Houſehold," "The Maſter General of the Ordnance," "Lord Godolphin, and Lord Churchill."

That the argument uſed by your Managers, " That they could " not allow any thing that tends to any impunity," is a very large aſſertion; and may be an argument againſt the Bill; becauſe it may happen, that by giving a copy of the indictment, and witneſſes being upon their oaths, a guilty man may eſcape; and then he has an impunity. This is not intended: All that can be done in theſe caſes is, to put in ſuch reaſonable caution, and ſo far as a Bill can provide for.

That this clauſe could not extend to the Biſhops, for it relates only to trials out of Parliament; and they are only Peers in Parliament, where they take their privilege to hear, and then go out again, and do not vote in blood: and, by the word Peereſs, it muſt be underſtood of ſuch Peers only, as are Peers in reſpect of their blood.

That the Lords were of opinion, That * Peers were ſufficient to condemn a Peer: but this makes no alteration in the argument; for there is not much more difficulty in getting twelve than ſeven: Indeed, there might be a great difference, where a Crown or Government was not concerned.

That the excellency of a jury is, That they are taken ex vicineto: What is the reaſon of this? Why, in caſe of falſe witneſſes, it is his neighbour that is to ſave the man: but what ſecurity have the Lords, when the Lords are picked out to try them, who are not of their acquaintance; and the Lords, who know the whole courſe of their lives to be contrary to what is ſworn againſt them, ſhall not be choſen?

That it is implied by the commiſſion of the Lord High Steward, That all the Peers ſhould be ſummoned; for, by his commiſſion all the Peers of the realm are commanded to attend upon him, and be obedient to him: ſo that the King does not only give liberty, but ſeems to command it.

* Sic Orig. The blank was probably intended to be filled with (ſeven). See p. 349. ad init.

THAT

THAT the Managers for the Commons, by way of reply, ſaid;

That this clauſe would alter the conſtitution of this court, and thereby a very conſiderable part of the conſtitution of the Government; and that for the worſe.

That it is not to be granted, that any new law does alter the Conſtitution:

That a new law may be made to ſtrengthen or reſtore the Conſtitution againſt the abuſes; it may be declaratory, it may aſcertain the things that before were left to reaſonable diſcretion; which are but circumſtances and accidents; and, notwithſtanding ſuch new laws, the ſubſtance of the Conſtitution remains the ſame:

So that, by this Bill, the perſon indicted is to have a copy of his indictment ten days before he ſhall plead: Whereas now, by the Common Law, he is to have the indictment read to him as oft as he needs and deſires; and to have copies of ſo much of it as he has occaſion to uſe; and reaſonable time to plead:

That by this Bill, he is to have his witneſſes ſworn; which, in ſome learned men's opinions, was the law before: however, it is but a circumſtance added to the teſtimony:

That by this Bill he is to have a copy of the panel before the trial: whereas, by the courſe now uſed, he hath a copy a reaſonable time before:

And, that by the law now, he is to have a reaſonable time to prepare for his trial; which time this Bill aſcertains by a number of days.

But that the alteration, by the clauſe in queſtion, is in a moſt ſubſtantial part; and which highly affects the Conſtitution of the Government.

That our government is a monarchy: and it is a main part of the King's authority to adminiſter juſtice by officers of his own appointing.

That the King makes ſheriffs; who, for the trial of a Commoner, returns ſo many freeholders as are competent.

That the King makes the High Steward; who, for the trial of a Peer, ſummons ſo many Peers as are ſufficient.

That, taking away theſe powers from the High Steward, and ſheriff, it takes ſo much from the regal authority; and it will amount to no leſs than to render the ſubjects independent on the Crown, in the pleas of the Crown; wherein, above all other things, the life, peace, and ſafety of the Government is concerned.

That, if a like clauſe were brought in, That every Commoner ſhould be tried by all the freeholders of the county that would appear, or ſuch of them as they ſhould depute, it could not well be denied, that this were a change in the Conſtitution of the Government.

That it may as well be ſaid, That it is not any altering of the Conſtitution, to diveſt the Crown of the power of making judges in courts of law and equity, and other courts, or making juſtices of the peace, and other officers.

That it was granted in Parliament, by 28 Edward I. that the people of any county ſhould chuſe the ſheriffs: but thereupon enſued ſuch factious confuſions and miſchiefs in the country, that, by the deſire of the people in Parliament, 9 Edward II. the power of making ſheriffs was ſettled in the Crown.

That, though the High Steward be ſaid to be the court; yet the Peers Triers are ſo neceſſary a part of the court, that the conviction, or acquittal, depends entirely on them: and therefore, not only the number of triers, but the nature of the court, may properly be affirmed to be altered by this clauſe.

That the Commons were ſurprized when they heard it alleged, That this court, and courſe of trial, was firſt introduced in Henry the Eighth's time, by Cardinal Wolſey, in the caſe of the Duke of Bucks; and that all trials of Peers before were in Parliament.

That

That the ſtatute made the 15th Edward III. manifeſtly proves the contrary: It ordained, that Peers ſhould be tried by their Peers in Parliament; but provides, That if any Peer would chuſe to be tried elſewhere than in Parliament, he might.

That, indeed, the ſtatute was repealed, 17 Edward III. becauſe it was ſo injurious to the prerogative. But yet it ſhews there was then ſuch a court and courſe of trials as this, out of Parliament: for they could not, in Edward the Third's time, divine, that there would be ſuch a new court and manner of trial erected in Henry the Eighth's time.

That the trial of the Earl of H. 1 H. IV. reported in the Year Books is no more to be queſtioned that any other caſe there: and it is cited as authentic by Stamford, in his learned Treatiſe of the Pleas of the Crown: and his opinion alſo is, That this way of trial was meant by the "Judicium Parium," mentioned in Magna Charta: and Stamford is of great authority in this behalf; for that he was cotemporary to the reign of Henry VIIIth, and could not have been unacquainted with this innovation, if ſuch there had been made in that time *.

And that the very clauſe of their Lordſhips now in queſtion, doth affirm the legality of this way of trial: for it diſtinguiſhes treaſons which corrupt the blood, from others; and leaves all other treaſons, and all felonies, to be tried by Peers ſummoned by the High Steward, as it is now uſed: which ſhews too, that there is no great danger apprehended to the Peers by this kind of trial.

That the Commons do not admit, that a Peer can be convicted by ſeven Peers: there muſt be twelve, at leaſt, to concur in the verdict: It is not only ſaid by Lord Coke, but the law is, That no man ſhall ſuffer capitally at the King's ſuit, unleſs

* See Stamford's Pleas of the Crown, Book the 3d, ch. 1ſt, intitled, "Triall per les Pieres," in which, he ſtates in what manner this Court of the High Steward is appointed and holden, p. 152.

his

his offence be found by twenty-four at leaſt, that is, twelve to find the indictment, and twelve to find the verdict *.

And that there muſt be twelve Peers agree in the verdict, was reſolved in the Lord Dacre's caſe, 26 Hen. VIIIth, which is remembered in Moore's Reports †.

And the caſe of every Peer that has been convicted, is a proof of this: for it cannot be ſhewn, that ever any Peer was convicted by fewer than twelve.

The Duodecemvirale Judicium, ſome time in uſe in foreign countries, was always approved, and eſtabliſhed by the law of England; and underſtood to be that authority, to which the determination of conteſted facts is intruſted: and therefore, in all other commiſſions and precepts, as well as thoſe of the High Steward, wherein the command is in general words; (viz. to return or ſummon tot et tales, ſuch and ſo many perſons, by whom the truth of the matter may be tried); it is to be anſwered and performed by the bringing of twelve perſons, who are to agree in the determination of the matter inquired of.

And, as to that clauſe that requires all Peers to be attending, it is but a clauſe of the ſame form and nature, as is in commiſſions of Oyer and Terminer, and other commiſſions; and imports no more, than that all perſons ſhould attend, who are required to do ſo by law: and it can no more be inferred, from thoſe words, That the High Steward is to ſummon all the Peers; than, from

* "Et nota, que le nomber des pieres, queux ſount a tryer aſcun ſeignieur, eſt 12, et ouſter quants le Roy plerra. Mes nemy dedeins ou deſoubs le nomber de 12. Come commen experyence nous infourma."—Stamford, Pl. Coro. p. 153. So in the Lord Dacre's caſe, 26 Hen. VIII. reported in Kelyng's Reports, p. 56, it is ſaid, "It "was agreed by moſt of the Judges, that "if all the Peers do not agree in their verdict, then the verdict of the greateſt part "of them is a good verdict, ſo that there be "12 or more; therefore the uſe is, never to "have leſs than 23 Peers for tryers; becauſe "that is the leaſt number, to be ſure of twelve "to be of one mind."

† See in Moore's Reports, p. 622, the four ſeveral points, which the Judges are ſaid to have determined in this caſe of the trial of Lord Dacre.

the

the like words in other commiſſions, all the freeholders are to be ſummoned.

It is the common notion of our law, that no man ſhall be convicted of a crime, but by the unanimous judgment of twelve unexceptionable perſons ſummoned by the King's officer.

The Commons have liberty of challenging; becauſe that fear, or corruption, or other cauſe of partiality, may be ſuppoſed among them.

The Lords have no challenges: but all Peers are eſteemed unexceptionable, becauſe nothing ſo mean and diſhonourable is to be preſumed among them.

Their Lordſhips anceſtors choſe to diſtinguiſh themſelves from their inferiors; and always claimed and enjoyed a privilege to be intruſted otherwiſe than the Commons are; viz.

They are upon honour, not oath;
Are not challengeable;
Give their verdict ſeriatim;
May have more than twelve on a trial;
And have claimed a liberty to eat or drink before their verdict:

And they uſed to value themſelves upon theſe things, as dignities and privileges.

Now the Commons, that are forbid to ſpeak otherwiſe of the preſent Peers than of their anceſtors, are to be excuſed, if they think no otherwiſe of them.

That the Commons obſerved, what their Lordſhips had alleged, concerning the inconveniencies or abuſes that had been or might be in this way of trial, was grounded upon undue ſuppoſitions concerning the Peers, or upon miſtakes, and not warranted by experience.

That they thought it a ſtrange and foreign ſuppoſition, that a great and guilty miniſter, finding himſelf liable to an impeachment next ſeſſion of Parliament, ſhould, by his power, procure

himſelf to be tried and acquitted by an inqueſt of perſons, on purpoſe, by a plea of Auterfoits acquit, to prevent a ſecond and true examination of his crimes; for he muſt be firſt indicted of his treaſon, and then run a hazard, whether his power will be, and continue, ſufficient to oblige ſo many Peers to acquit him by an untrue verdict.

That there is no example of this kind: and, if ſuch an unheard-of proceeding ſhould ever happen, it is left to conſideration, whether a Parliament would not vindicate the kingdom againſt ſo groſs and fraudulent a contrivance.

That, beſides that, the court, as it is to be ordered by this clauſe, would be no leſs liable to ſuch abuſe.

That their Lordſhips did not aſſign any ſufficient inſtances of injuſtice in this court: and, perhaps, this court hath continued the moſt unblemiſhed, in point of juſtice, of any court whatſoever.

That, in the few trials which have been there for treaſon, there have been two acquittals; viz. the Lord Dacre, and Duke of Somerſet; beſides that of the Lord Delamere.

That the Duke of Northumberland's crime was notorious, he having been in open rebellion againſt Queen Mary.

That if the Earl of Wiltſhire had been forced to ſit on the trial of his daughter Ann Boleyn, it ſeems to ſhew a great fairneſs: and, if the court had been conſtituted according to this clauſe, he muſt have been ſummoned; and if the trial had been in Parliament, he, as well as other Peers, had been obliged to come: but the tradition about that matter is rectified, by the diſcovery made by a reverend Prelate, in his Hiſtory of the reformation (a book approved by their Lordſhips); where it is made appear, the Earl did not ſit upon the trial of the Queen.

But that, if all power muſt be aboliſhed which is poſſible to be abuſed, there muſt be no power left to the King, or Lords, or Commons; and perhaps there are not harder caſes to be found, than

than thoſe wherein all three have concurred; of which the attainting Cromwell Earl of Eſſex, without ſuffering him to come from the Tower to be heard, is an inſtance *.

That, if any inquiſition may be made into what is now doing, it were better to lay aſide the clauſe, that nobody may have any dependance, but upon the ſafety of the preſent Government.

That the High Steward is made pro hac vice, or after the crime, is no ſingular thing.

The Juſtices of Oyer and Terminer, and of Gaol Delivery, are generally made ſo twice a year, or oftener; and Sheriffs are appointed in every year, or oftener; and all hold their places during the King's pleaſure.

And, notwithſtanding this clauſe, the High Steward is ſtill to be appointed by the King, in the ſame manner as before: and in all treaſons, but thoſe mentioned, and in all felonies, he continues to have the ſame power of trying a Peer by an inqueſt of Peers, ſummoned by his precept, as is now uſed; by which alone the lives and fortunes of Peers will remain expoſed to as much danger as they were, if any there were, before this Bill.

That the Commons acknowledge they have known, that when a Peer hath ſtood indicted, ſitting a Parliament, the indictment has been, by the King's writ of Certiorari, removed into the Houſe of Peers, there to be tried by all the Peers: but they do not know, that of neceſſity that muſt be done, or that ſuch Peer may not be tried in the ordinary court; and it would be highly inconvenient, in caſe of long adjournments, if it might not ſo be †.

But that it is no concluding argument, that, becauſe there is this extraordinary way of trial by all the Peers, therefore the

* See this caſe of the Earl of Eſſex, before p. 84, N° 19. and the note.

† See the note in p. 336, which refers to Lord Delamere's plea on this point, and the Lord High Steward's Lord Jefferies' anſwer to it.

ordinary, by a number of Peers, ſhould be taken away; no more than that, becauſe there is ſuch an ordinary, therefore the extraordinary ſhould be taken away.

That there is alſo another way of trial, which, in capital offences, concerns the Peers too; that is, by a Jury of Freeholders, which their Lordſhips, in this debate, did commend; becauſe thoſe Freeholders were of the vicinage, and the priſoner might challenge thirty-five without cauſe, and any of the reſt of the panel for cauſe: and by this the Peers, as well as Commons, are to be tried, in an appeal of murder, rape, or other felony: but it is ſuppoſed, their Lordſhips will not allow it a good argument, that therefore they ſhould be ordered to be tried ſo in treaſon, and indictments of felony; but they hold it a privilege to be tried, in ſuch caſe, by their Peers, in the manner now uſed.

But that the method of trial, appointed by this clauſe, is worſe than any of thoſe now in being; and it has nothing of the nature or virtue of a trial in Parliament; for the Lords' Houſe hath power to ſend for, and cauſe all Peers to come, as they did upon the trial of the late Lord Stafford: but, to this intended court, none are to come, but ſuch as voluntarily will: nor is it required that there ſhould be twelve, or any certain number; if but two or three appear, it is enough; and probably none will come, but the accomplices and abettors, and favourites, friends and relations of the party: nor is it poſſible to bring together all the Peers there, as in Parliament; for, in Parliament, the Houſe of Peers may appoint or adjourn the proceedings at or to any time or times, and as often as they think fit, till the Houſe be full: but the proceedings of this court, before the High Steward, is the work but of one day.

That, in the laſt place, the Commons replied, That they did not find reaſon to paſs this clauſe, from what was ſo much preſſed by their Lordſhips, viz. That the clauſe did provide for ſuch defence for the Peers, as would encourage them to venture

to

to join boldly with the Commons in aſſerting the public liberties:

For the Commons do not find, that, by the preſent conſtitution, the lives and fortunes of innocent Peers are, as their Lordſhips intimated, expoſed to the will of a great and malicious Miniſter: and, if they were, they do not ſee that they would be protected by this proviſion, ſince it extends but to ſome treaſons, and to no felonies: and they may ſay, it does not deſerve the name of Adventure, for their Lordſhips to act only upon terms of perfect ſafety.

And that, on the other hand, the Commons apprehend it would afford too great a proſpect of ſafety to guilty Peers; and might embolden them to attempt againſt the Crown, or the public liberties.

That the Commons acknowledge, that theſe are good times; and, if they are unquiet or unſafe, it is in relation to the Crown, and not to the Peers: the Peerage is in no danger; the Peers have power enough; and the Crown hath not too much; nor ought to be rendered leſs ſafe.

That, therefore, the Commons would inſiſt upon the old ways; keep the balance of the Government as they found it; and not change the laws of England, which hath been hitherto uſed and approved.

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(Lords Journals.)

*Die Lunæ*, 18° *die Januarii*, 1691.

THE Earl of Mulgrave reported from the Lords' Committees appointed to inſpect Commiſſions for Lords High Stewards,

upon trials of Peers out of Parliament, "That the Committee "had examined all the Precedents ſince Henry the VIIIth's time, "and one in his time; one of which Precedents they have "ordered to be brought into the Houſe; and they find that "every High Steward for ſuch trials is directed, by Commiſ- "ſion under the Great Seal of England, to ſummon every perſon, "who is a Peer to the ſaid perſon tried; and that every precept "iſſued from him is according to the ſame tenor; (videlicet), "That every Peer ſhould be ſummoned:" but they have alſo found, that in every return of ſuch precept made by the Serjeant at Arms, there is mention made of a ſchedule or liſt of ſome "particular Peers which he had then ſummoned, contrary to "thoſe general words both in the commiſſions and precepts; "which ſchedule or liſt yet does not appear on any record, "or in any office; nor will any perſon own the delivery of "any ſuch liſt, in order to thoſe trials which have been of late "years."

Then part of the proceedings upon the trial of the Duke of Norfolk, were read, out of the record.

And after debate thereupon, and commiſſions for Lords High Stewards;

The queſtion was propoſed,

"That it is the opinion of this Houſe, upon ſearch into "the Precedents of all the commiſſions of High Stewards, "ſince the reign of King Henry the VIIIth, That, both by the "King's commiſſions to the ſeveral Lords High Stewards, and "by the precepts from the Lords High Stewards purſuant to "thoſe commiſſions, all the Peers of England were directed, "under the Great Seal, to be ſummoned to the trial of every Peer "that was to be tried."

The previous queſtion was put,

"Whether this queſtion ſhall be put."

It was reſolved in the affirmative.

Then the main queſtion was put,

" That it is the opinion of this Houſe, upon ſearch into " the Precedents of all the commiſſions of High Stewards ſince " the reign of Henry the VIIIth, That, both by the King's " commiſſions to the ſeveral Lords High Stewards, and by the " precepts from the Lords High Stewards, purſuant to thoſe " commiſſions, all the Peers of England were directed, under the " Great Seal, to be ſummoned to the trial of every Peer that was " to be tried."

It was reſolved in the affirmative.

APPENDIX,

# APPENDIX, N° 4. (p. 72.)

*Die Mercurii, Primo die Maii*, 1689.

*Mr. Petyt's Report on Delays of Judgments, &c.*

THE Earl of Huntingdon acquainted the Houſe, That he was ordered to report, from the Committee of Privileges, That, they finding the Statute of 14 E. III. cap. 5. intituled, " Delays of Judgments in other Courts ſhall be redreſſed in Par- " liament," is ſtill in force; by which Statute it is enacted, " That at every Parliament ſhall be choſen a Prelate, two Earls, " and two Barons, who ſhall have commiſſion from the King, to " hear, by petition, all complaints of delays or grievances done to " them, in the Chancery, King's Bench, Common Pleas, and " Exchequer:" Upon which, their Lordſhips having adviſed with Mr. Petyt, he delivered in a Report in writing, which their Lordſhips offer to the Houſe to be read; which was read; (videlicet,)

" As concerning the Statute of the 14 Edw. III. whereby " it is ordained, That delays of Judgments in other Courts, " ſhould be redreſſed in Parliament."

" The Statute recites, That divers miſchiefs had happened, for " that in the Chancery, King's Bench, Common Pleas, and Ex- " chequer, &c. judgments had been delayed, ſometimes for dif- " ficulty, and ſometimes for divers opinions of the Judges, and " ſometimes for other cauſes; for which reaſons it was enacted, " That at every Parliament there ſhould be choſen a Prelate, two " Earls, and two Barons, who were to be commiſſioned to hear, " by petition, ſuch complaints of ſuch delays and grievances, and

" to cauſe to come before them the Judges, and the tenor of " the records and proceſſes of judgments ſo delayed; and, by " advice of the Chancellor and the Treaſurer, and the Juſtices of " both Benches, and as many of the King's Counſel as they ſhould " think fit, to direct what judgment the court ſhould give.

" And in caſe it ſhould ſeem to them, that the difficulties be ſo " great, that they may not well be determined without aſſent of " the Parliament, that the ſaid tenor or tenors ſhould be brought " by the ſaid Prelate, Earls, and Barons, into the next Parlia- " ment; and there a final accord ſhould be taken, what judg- " ment ought to be given in the caſe."

" I cannot now tell how well the ſtatute was executed in " every Parliament in the long reign of Edw. IIId; but, no " doubt, many examples may be found in the execution thereof, " among the records in the Tower.

" And this is certain, that, in 9° Rich. IId. there was a com- " miſſion granted, wherein this Statute of the 14th of King Edward " the IIId. is recited at large. The commiſſion was made to thir- " teen Commiſſioners, de audiendo Querelam Thomæ Lovel, de " Aſſenſu Parliamenti; commanding the Chancellor, the Trea- " ſurer, the Juſtices, and others of the King's Counſel, to at- " tend and aſſiſt the ſaid Commiſſioners.

" So that I conceive the Statute 14° Edw. IIId. is ſtill in " force; but there are two things, which will be neceſſary to " put it in execution.

" The firſt is, That ſuch Prelate, Earls, and Barons, " muſt be nominated by Aſſent of Parliament.

" The ſecond is, That there muſt be a Commiſſion un- " der the Great Seal granted by the King to them.

" W^M PETYT."

APPENDIX,

# APPENDIX, N° 5. (p. 124.)

*Extract from Parliamentary Hiſtory*, Vol. VI. p. 464.

*Remonſtrance to Charles the Firſt, from the Houſe of Commons, reſpecting ſome Expreſſions in his Speech on the Subject of the Duke of Buckingham*, Anno 1626.

Moſt Gracious Sovereign,

WHEREAS your Majeſty hath been pleaſed of late, at ſundry times, and by ſeveral means, to impart unto us your royal pleaſure, touching ſome paſſages and proceedings in this preſent Parliament: we do firſt, with unſpeakable joy and comfort, acknowledge your Majeſty's grace and favour, in that it hath pleaſed you to cauſe it to be delivered unto us, by the Lord Keeper of your Great Seal, in your own royal preſence, and before both Houſes of Parliament, That never King was more loving to his people, nor better affected to the right uſe of Parliaments; withal profeſſing your moſt gracious reſolution to hear and redreſs our juſt grievances. And, with like comfort, we acknowledge your Majeſty's goodneſs ſhining, at the very entrance of your glorious reign, in commanding the execution of the laws eſtabliſhed to preſerve the true religion of Almighty God, in whoſe ſervice conſiſteth the happineſs of all Kings and kingdoms.

Yet, let it not diſpleaſe your Majeſty, that we alſo expreſs ſome ſenſe of juſt grief, intermixed with that great joy, to ſee the careful proceedings of our ſincere intentions ſo miſreported as to have wrought effects unexpected, and we hope undeſerved.

Firſt, touching the charge againſt us in the matter concerning Mr. Coke:—We all ſincerely proteſt, That neither the words

mentioned

mentioned in your Majeſty's meſſage, nor any other of ſeditious effect, were ſpoken by him; as hath been reſolved by the Houſe, without one negative voice. Howſoever, in a ſpeech occaſionally uttered, he did let fall ſome few words which might admit an ill conſtruction, whereat the Houſe being diſpleaſed, at the delivery of them, as was expreſſed by a general and inſtant check, he forthwith ſo explained himſelf, and his intention, that, for the preſent, we did forbear to take them into conſideration, which ſince we have done: and the effect thereof had before this appeared, if, by importunate buſineſs of your Majeſty's ſervice, we had not been interrupted.

The like interruption did alſo befal us in the caſe of Dr. Turner; wherein the queſtion being formally ſtated, a reſolution was ordered to have been taken that very day, on which we received your Majeſty's command to attend you.

But, for our own proceedings, we humbly beſeech your Majeſty to be truly informed, that, before that overture from Doctor Turner, (out of our great and neceſſary care for your honour and welfare of your realm) we had taken into ſerious conſideration the evils which now afflict your people, and the cauſes of them, that we might apply ourſelves unto the fitteſt remedies: in the purſuit whereof, our Committees (whatſoever they might have done) have in no particular proceeded otherwiſe, than either upon ground of knowledge in themſelves, or proof by examination of witneſſes, or other evidence.—In which courſe of ſervice for the public good, as we have not ſwerved from the parliamentary ways of our predeceſſors, ſo we conceive that the diſcovery and reforming of errors, is ſo far from laying an aſperſion upon the preſent time and government, that it is rather a great honour and happineſs to both, yielding matter to great Princes, wherein to exerciſe and illuſtrate their nobleſt virtues.

And although the grievous complaints of the Merchants from all parts, together with the common ſervice of the ſubjects well

affected to thoſe who profeſs our religion, gave us occaſion to debate ſome buſineſſes that were partly foreign, and had relation to affairs of ſtate; yet we beſeech your Majeſty to reſt aſſured, it was exceeding far from our intention, either to traduce your counſellors, or diſadvantage your negociations.

And though ſome examples of great and potent Miniſters or Princes, heretofore queſtioned in Parliament, have been alleged; yet was it without paralleling your Majeſty's government, or councils, to any times at all, much leſs to times of exception.

Touching the letter of your Majeſty's Secretary:—it was firſt alleged by your advocate for his own juſtification, and after, by direction of the Committee, produced to make good his allegation.

And for the ſearch of the Signet Office:—the copy of a letter being divulged, as in your Majeſty's name, with pregnant cauſe of ſuſpicion, both in the body and direction thereof, to be ſuppoſitious; the Committee out of deſire to be cleared therein, did, by their order, ſend ſome of themſelves to the Signet Office, to ſearch whether there were any records or letters of that nature, without warrant to the officer for any, much leſs for a general ſearch.

But touching public Records:—we have not forborn, as often as our buſineſſes have required, to make ſearch into them; wherein we have done nothing unwarranted by the laws of your realm, and the conſtant uſage of Parliaments.—And if, for the eaſe of their labours, any of our Committees have deſired the help of the officers repertories, or breviats of direction, we conceive it is no more than any ſubject, in his own affairs, might have obtained for ordinary fees.

Now, concerning your Majeſty's ſervants, and, namely, the Duke of Buckingham:—we humbly beſeech your Majeſty to be informed by us your faithful Commons, who can have no private end but your Majeſty's ſervice, and the good of our country,

"That it hath been the ancient, conſtant, and undoubted right and uſage of Parliaments, to queſtion and complain of all perſons, of what degree ſoever, found grievous to the common wealth, in abuſing the power and truſt committed to them by their Sovereign." A courſe approved, not only by the examples in your father's days, of famous memory, but by frequent precedents in the beſt and moſt glorious reigns of your noble progenitors, appearing both in records and hiſtories; without which liberty in Parliament, no private man, no ſervant to a King, perhaps no counſellor, without expoſing himſelf to the hazard of great enmity and prejudice, can be a means to call great officers into queſtion for their miſdemeanors; but the common wealth might languiſh under their preſſures without redreſs: and whatſoever we ſhall do accordingly in this Parliament, we doubt not but it ſhall redound to the honour of the Crown and welfare of your ſubjects.

Laſtly, we moſt humbly beſeech your Majeſty graciouſly to conceive, that though it hath been the long cuſtom of Parliaments to handle the matter of ſupply with the laſt of their buſineſſes; yet, at this time, out of extraordinary reſpect to your perſon, and care of your affairs, we have taken the ſame into more ſpeedy conſideration; and moſt happily, on the very day of your Majeſty's inauguration, with great alacrity and unanimous conſent, after a ſhort debate, we grew to the reſolution for a preſent ſupply, well known to your Majeſty.

To which, if addition may be made of other great things for your ſervice, yet in conſultation amongſt us, we doubt not but it will appear, that we have not receded from the truth of our firſt intention, ſo to ſupply you, as may make you ſafe at home and feared abroad; eſpecially if your Majeſty ſhall be pleaſed to look upon the way intended in our promiſe, as well as to the meaſure of the gift agreed.

With the like humility, we beſeech your Majeſty not to give ear to the officious reports of private perſons for their own ends, which hath occaſioned ſo much loſs of time; nor to judge our proceedings whilſt they are in agitation, but to be pleaſed to expect the iſſue and concluſion of our labours; which, we are confident, will manifeſt and juſtify to your Majeſty the ſincerity and loyalty of our hearts, who ſhall ever place in a high degree of happineſs the performing of that duty and ſervice in Parliament, which may moſt tend to your Majeſty's honour and the good of your kingdom.

APPENDIX,

# APPENDIX, N° 6. (p. 36. and 177.)

*Extract from the Lords Journal, the 29th of November, 1667.*

*Report of the Free Conference touching Lord Clarendon's Impeachment.*

NEXT, the Lord Chamberlain, and the other Lords appointed to manage the Free Conference with the Houſe of Commons yeſterday, reported the ſubſtance and effect of the ſaid Free Conference, as followeth:

"This Conference was managed, on the Houſe of Commons "part, by Sir Robert Howard, Mr. Vaughan, Mr. Swinfin, and "Mr. Waller.

"The introduction was made by my Lord Chamberlain; who "told the Commons, That this Free Conference was deſired by "them; and, though that Houſe had lately declined giving the "Lords a Conference when deſired, yet the Houſe of Peers, upon "this occaſion, had diſpenſed with ſome forms, to keep a good "correſpondence with the Houſe of Commons, and were willing "to confer freely with them, and ready to hear what they had to "ſay.

"Sir Robert Howard was the firſt that opened the buſineſs. "He ſaid, This Conference was not upon particular account of "any perſon, but in relation to public juſtice.

"The Lords cloſed in the ſame, and were very glad it was ſo "underſtood; for they had no particular regard to the Earl of "Clarendon in what they had reſolved, but to the juſtice of the "kingdom; in the adminiſtration whereof in this particular, "nothing was ordered in the caſe of the Peer now impeached,

"which

" which they ſhould not have inſiſted upon in the caſe of any " Commoner.

" Then Sir Robert Howard and the reſt of the Commons pro- " ceeded; and made the ſubject matter of this Free Conference " to be ſome of the reaſons formerly given by the Houſe of Com- " mons, which they enforced what they could; and the proceed- " ings of the Earl of Strafford's caſe, the Archbiſhop of Canterbury, " Lord Keeper Finch, and Sir George Ratcliffe's—but the pre- " cedent chiefly preſſed was, the Earl of Strafford's; on which, " by large diſcourſe (which intimated their inſiſting mainly on " that) they urged, that precedents did ſhew beſt the courſe of " Parliaments, which was the law of Parliaments; and that the " precedents they had vouched, eſpecially that of the Earl of " Strafford's, were clear in the point; that the end of the Act of " Repeal was to repeal the Act of Attainder, and the proceedings " relating thereunto; that the manner of impeachment and com- " mitment, and other proceedings thereupon, were ſtill in force; " and that the lateſt and neweſt precedents were the beſt. They " deſcanted long upon the words of the Act of Repeal, to evince " what they had ſaid; and diſtinguiſhed the firſt year of the " Long Parliament, for gravity and wiſdom, from the reſt, which " was diſorderly and unquiet; and ſaid, That theſe precedents " were made in the firſt year; and that proceedings in times " of peace, when the courts of Weſtminſter were open, were " always allowed for good; and concluded, that the Lords ought " to commit upon every general impeachment of the Commons " for treaſon: and this grew to be the queſtion ſtated at this " Conference; which the Commons affirmed, and the Lords " denied.—Some things were alſo ſaid by the Commons, of " the credit that was to be given to all the Commons of " England, which they repreſented; and that they could not be " ſuppoſed to intend any thing herein but public juſtice and " ſafety, &c.

" The

" The Lords anſwered, and argued from the very ſame Act " for reverſing the Earl of Strafford's attainder, as followeth :— " That this precedent was not allowable, being in an ill time, " and branded by an Act of Repeal; by which it was clear, this " very Parliament intended it ſhould never be made uſe of; for, " beſides that the Act of Attainder recites the very impeachment " particularly, and other proceedings thereupon, and ſtands abſo- " lutely and totally repealed; which is enough to condemn the " whole; yet they were ſo careful that this precedent, which " led on the other three, ſhould never riſe in judgment again, " that they further enacted, in expreſs words, " That all records " and proceedings of Parliament relating to the ſaid attainder be " wholly cancelled and taken off the file, or otherwiſe defaced " and obliterated, to the intent the ſame may not be viſible in " after-ages, or brought into example to the prejudice of any " perſon whatſoever ;" in which general words, every circumſtance " and paſſage of that precedent muſt needs be included, none being " excepted; ſo that this left the courſe of Parliament, for accuſa- " tions and trials for treaſons, as it was before. And there were " no other proceedings, previous to the ſaid attainder, but the ſaid " impeachment upon trial, and proceedings thereupon.

" The Lords ſaid, They could not allow all for good that was " done in Parliament whilſt the courts of Weſtminſter ſat; nor " would the Commons, if they reviewed the tranſactions of " the Long Parliament. They abſolutely denied the neweſt " precedent to be the beſt. Antiquity was always venerable; " laws and old precedents, with a conſtant courſe of them, were " moſt to be eſteemed. They had both for them in this con- " troverſy.

" The Lords gave theſe further reaſons, in anſwer to the Com- " mons, and to ſhew why they ought not, upon every general " accuſation of treaſon by the Commons, to commit to cuſtody " the perſon or perſons accuſed:—

" That

" That there could be no precedent of commitment produced, " upon a general accuſation of treaſon, before the Earl of Straf- " ford's caſe; which muſt neceſſarily have been, to make it the " courſe of Parliament. The laſt drops of a river make not a " ſtream or courſe, but the conſtant current: ſo a new precedent, " but of yeſterday as it were, and within the ſad memory of us all, " could not be called the courſe of Parliament.

" It ſeems contrary to natural juſtice and reaſon, that a perſon " accuſed ſhould be puniſhed before he knows his crime; and, " though the impriſonment may be ſaid to be for cuſtody, " yet there is no perſon, that knows not his fault, but takes it " for a puniſhment; and it is really ſo, if he come after to be " acquitted.

" It is not ſuitable to the dignity or truſt of Judges in inferior " courts, much leſs in Parliament, the higheſt court, that they " ſhould be kept ignorant of the crimes, whilſt they are preſſed to " commit to priſon upon a general mention of them; or that the " proſecutors ſhould conceal what they know from the Judges, or " have ground to aſk what they will, and not let the Judges have " ground to proceed upon.

" If the Lords ought to commit upon the Commons impeach- " ment, they ſeem rather to be executors of proceſs or orders, " than Judges; which ever implies a power to conſider, and do as " they ſhall be ſatisfied in judgment.

" The precedents are contrary; as 14° E. 2. M. 7; Archbiſhop " Arundell's caſe, 21 R. II; the Lord Stanley's caſe, 38 H. VI; " and William de la Pole, Duke of Suffolk's caſe; as the Com- " mons themſelves, in the argument at the Free Conference, upon " the Petition of Right, by Sir Edward Coke, acknowledged, and " urged ſtrongly, as being in the very point.—This was 28 H. VI. " N° 16, &c.

" Such

" Such a courſe of proceeding would not leave it in the power " of the Houſe of Peers to preſerve Magna Charta, and the " Petition of Right (which favour liberty) from invaſion; and " herein the Lords inſiſt not only for themſelves, but for all the " Commons.

" Though this be a Houſe of Commons excellently compoſed; " yet the admitting this claim of theirs juſt or warrantable, if ever " there ſhould be a Houſe of Commons ill diſpoſed or engaged in " faction, as ſuch have been, they might, by pretence thereof, " make dangerous inroads upon the juſtice and ancient govern- " ment of the kingdom, terrify and diſcompoſe the higheſt judi- " cature, and invade that freedom which ought to be in Parlia- " ment, and indeed bring the Houſe of Lords to as ſmall a number " as they pleaſe to leave unaccuſed.

" Judges in inferior courts may bail for treaſon ſpecified; *a* " *majore*, may the Houſe of Lords refuſe to commit till ſpecifica- " tion, or bail after.

" There are no real miſchiefs or inconveniencies the other way; " but many appear by committing, before the Judges be ſatisfied " in the crimes.

" The practice of all Judges and Juſtices, in favour of liberty, " and to prevent oppreſſion, is to examine upon oath the par- " ticular crimes before commitment, that the ground may ap- " pear to them for commitment; or elſe they are of duty to " bail, where the offence is bailable, though the accuſation may " be laid to be treaſon; much more ſhould the Parliament be " careful herein, who give examples and precedents of juſtice to " all other courts.

" If the King and his Council are not to impriſon without " ſpecial crime, as the Commons now argue, and did ſo before " in the Conference for the Petition of Right, to which the " Lords agreed, and yet the King is *Caput Parliamenti*; whence

" comes this power of the Houſe of Commons by vote to enforce " commitment? and how dangerous is it to the ſubject!

" The Petition of Right having concluded 'That no man " ought to be impriſoned or detained without being charged with " ſomething to which they might make anſwer according to " law;' how will it ſtand with that to commit upon generals, to " which no man can make anſwer, or defend himſelf?

" There were no new reaſons offered by the Houſe of Com- " mons; and therefore the Lords told them, That, (having con- " ſidered of thoſe they had given, and over-ruled them) after a " rule twice given by the higheſt court, it is not to be diſputed, " but the parties muſt ſubmit; or, as they reſolved laſt ſeſſion, " there could be no proceedings or diſpatch in cauſes.

" At this Conference Mr. Vaughan ſaid, The Houſe of " Commons do think the judicature ſo well and ſafely lodged in " the Houſe of Lords, that the Commons do not wiſh any part " of it.

" The Commons would not agree, that the caſe of William " de la Pole was upon the impeachment of the Houſe of Com- " mons; and ſaid, That the caſe of Archbiſhop Arundell was " repealed, 1 H. IV.—But the firſt the Lords evinced clearly, " by the record, which was preſent; and the repeal of Arundell's " caſe did not weaken, but ſtrengthen it as a precedent in this " caſe, being in the repeal it was not in the leaſt impeached in " the point the Lords vouched it for. And the chief ground " for repealing the acts of that Parliament was, for the hard " meaſure it ſhewed to the Houſe of York; for maintenance of " whoſe title the ſaid Archbiſhop was a chief inſtrument.

" Some Members of the Houſe of Commons urged their former " third reaſon before, That if, before ſecuring the perſon, the " ſpecial matter of treaſon ſhould be alledged, it would be a ready " courſe that all complices in the treaſon might make their eſcape,

" or quicken the execution of the treaſon intended, to ſecure " themſelves the better thereby.

" To which the Lords made anſwer, That it would be very " hard with the ſubject, if they ſhould be committed when neither " the Judge nor the accuſer did know the crime; and if, in this " caſe, the Houſe of Commons, who are the accuſer, did know it, " they might ſafely impart it to the Lords; for though in five " hundred counſellors there may be allowed to be wiſdom, yet " there is not to be expected ſecrecy."

# APPENDIX, N° 7. (p. 189 and 193.)

*Extract from the Commons Journal, 26th of May, 1679.*

*Mr. Sacheverell's Report of Reaſons for preventing Biſhops voting on Impeachments for capital Offences: and reſpecting the Invalidity of Lord Danby's Pardon.*

MR. Sacheverell reports, from the Committee appointed to draw up reaſons, why this Houſe cannot proceed to the trial of the Lords, before judgment given upon the Earl of Danby's plea of his pardon—and the point of the Biſhops not voting in any of the proceedings upon impeachments for capital offences, and the methods of proceedings, are adjuſted; That the Committee had agreed upon an anſwer to be returned to the laſt meſſage of the Houſe of Peers, touching their appointment of the trial of the five Lords in the Tower to be on Tueſday next; together with reaſons for their inſiſting upon their former vote: which he read in his place; and afterwards delivered the ſame in at the Clerk's Table: where the ſame were again read; and, with ſome amendments made at the table, upon the queſtion agreed; and are as followeth; viz.

The Commons have always deſired, that a good correſpondence may be preſerved between the two Houſes.

There is now depending, between your Lordſhips and the Commons, a matter of the greateſt weight; in the tranſaction of which, your Lordſhips ſeem to apprehend ſome difficulty in the matter propoſed by the Commons.

To clear this the Commons have deſired this Conference; and by it they hope to manifeſt to your Lordſhips, that the propoſitions

of

of the Houſe of Commons, made by their Committee, in relation to the trial of the Lords in the Tower, have been only ſuch as have been well warranted by the laws of Parliament, and conſtitution of the government; and in no ſort intrench upon the judicature of the Peers; but are moſt neceſſary to be inſiſted upon, that the ancient rights of judicature in Parliament may be maintained.

The Commons readily acknowledge, that the crimes charged upon the Earl of Powys, Viſcount Stafford, Lord Petre, Lord Arundell of Wardour, and Lord Bellaſyſe, are of deep guilt, and call for ſpeedy juſtice; but withal they hold any change in judicature in Parliament, made without conſent in full Parliament, to be of pernicious conſequence, both to his Majeſty and his ſubjects; and conceive themſelves obliged to tranſmit to their poſterity all the rights, which, of this kind, they have received from their anceſtors. By putting your Lordſhips in mind of the progreſs that hath already been between the two Houſes, in relation to the propoſitions made by the Commons, and the reaſonableneſs of the propoſitions themſelves, they doubt not to make it appear, that their aim hath been no other than to avoid ſuch conſequence, and preſerve ſuch right, and that there is no delay of juſtice on their part: and, to that end, do offer to your Lordſhips the enſuing reaſons and narrative.

That the Commons, in bringing the Earl of Danby to juſtice, and diſcovery of that execrable and traitorous conſpiracy of which the five Lords now ſtand impeached (and for which ſome of their wicked accomplices have already undergone the ſentence of the law, as traitors and murderers), have laboured under great difficulties, is not unknown to your Lordſhips: that, upon the impeachment of the Houſe of Commons againſt the Earl of Danby for high treaſon, and other high crimes, miſdemeanors, and offences, even the common juſtice of ſequeſtering him from Parliament,

liament, and forthwith committing him to ſafe cuſtody, was then required by the Commons, and denied by the Houſe of Peers; though he then ſat in their Houſe: of which your Lordſhips have been ſo ſenſible, that, at a Free Conference, the tenth of April laſt, your Lordſhips declared, "That it was the right of the Commons, "and well warranted by precedents of former ages, that upon an "impeachment of the Commons, a Peer ſo impeached ought of "right to be ordered to withdraw; and then to be commit-"ted." And, had not that juſtice been denied to the Commons, great part of this ſeſſion of Parliament, which hath been ſpent in framing and adjuſting a Bill for cauſing the Earl of Danby to appear, and anſwer that juſtice from which he was fled, had been ſaved; and had been employed for the preſervation of his Majeſty's perſon and the ſecurity of the nation, and in proſecution of the other five Lords: neither had he had the opportunity of procuring for himſelf that illegal pardon, which bears date the firſt of March laſt paſt; and which he hath now pleaded in bar of this impeachment; nor of waſting of ſo great a portion of the treaſury of the kingdom, as he hath done ſince the Commons exhibited their articles of impeachment againſt him.

After which time thus loſt, by reaſon of the denial of that juſtice which of right belonged to the Commons, upon their impeachment, the ſaid Bill being ready for the Royal Aſſent, the Earl of Danby ſurrendered himſelf; and, by your Lordſhips order of the ſixteenth of April laſt, was committed to the Tower: after which, he pleaded the ſaid pardon; and, being preſſed, did at length declare, That he would rely upon and abide by that plea. Which pardon pleaded being illegal and void, and ſo ought not to bar or preclude the Commons from having juſtice upon their impeachment; they did thereupon, with their Speaker, on the fifth of May inſtant, in the names of themſelves and of all the Commons of England, demand judgment againſt the ſaid Earl, upon their impeachment; not doubting but that your Lordſhips intended,

intended, in all proceedings upon the impeachment, to follow the uſual courſe and methods of Parliament.

But the Commons were not a little ſurprized by the meſſage from your Lordſhips, delivered on the ſeventh of May; thereby acquainting them, That as well the Lords Spiritual as Temporal had ordered, That the tenth of May inſtant ſhould be the day for hearing the Earl of Danby, to make good his plea of pardon; and that on the thirteenth of May, the other five Lords impeached ſhould be brought to their trial: and that your Lordſhips had addreſſed his Majeſty, for naming a Lord High Steward, as well in the caſe of the Earl of Danby, as of the other five Lords.

Upon conſideration of the ſaid meſſage, the Commons found, that the admitting the Lords Spiritual to exerciſe juriſdiction in theſe caſes, was an alteration in the judicature in Parliament; and which extended as well to the proceedings againſt the five Lords, as againſt the Earl of Danby: and that, if a Lord High Steward be neceſſary upon trials on impeachments of the Commons, the power of judicature in Parliament, upon impeachments, might be defeated, by ſuſpending or denying a commiſſion to conſtitute a Lord High Steward: and that the ſaid days of trial, appointed by your Lordſhips, were ſo near to the time of your ſaid meſſage, that the matters and the methods of proceedings upon the trials could not be adjuſted, by Conferences between the two Houſes, before the day nominated; and conſequently the Commons could not proceed to the trial, unleſs the zeal which they had for ſpeedy judgment againſt the Earl of Danby (that ſo they might proceed to the trial of the other five Lords) might induce them, at this juncture, both to admit of the enlargement of your Lordſhips juriſdiction, and ſit down under thoſe or many other hardſhips (though with the hazard of the Commons power of impeachment for the time to come) rather than the trial of the ſaid five Lords ſhould be deferred for ſome ſhort time, whilſt theſe matters might be agreed on and ſettled.

For

For reconciling differences in theſe great and weighty matters, and for ſaving that time which would neceſſarily have been ſpent in debates at Conferences betwixt the two Houſes; and for expediting the trial, without giving up the power of impeachments, or rendering them ineffectual; the Commons thought fit to propoſe to your Lordſhips, That a Committee of both Houſes might be appointed for this purpoſe: at which Committee (when agreed to by your Lordſhips) it was firſt propoſed, That the time of the trial of the Lords in the Tower ſhould be put off, till the other matters were adjuſted: and it was then agreed, that the propoſitions, as to the time of trial, ſhould be the laſt thing conſidered: and that the effect of this agreement ſtands reported upon your Lordſhips books.

After which, the Commons communicated to your Lordſhips, by your Committee, a vote of theirs; viz. That the Committee of the Commons ſhould inſiſt upon the former vote of their Houſe: and that the Lords Spiritual ought not to have any vote in any proceedings againſt the Lords in the Tower: and that, when that matter ſhould be ſettled, and the methods of proceedings adjuſted, the Commons would be then ready to proceed upon the trial of the pardon of the Earl of Danby, againſt whom they had before demanded judgment; and afterwards to the trial of the other five Lords in the Tower: which vote extended, as well to the Earl of Danby as the other five Lords. But the Commons as yet received nothing from your Lordſhips towards an anſwer of that vote, ſave that your Lordſhips have acquainted them, That the Biſhops have aſked leave of the Houſe of Peers, that they might withdraw themſelves from the trial of the ſaid five Lords, with liberty of entering their uſual proteſtations.

And though the Commons have almoſt daily declared to your Lordſhips Committee, That that was a neceſſary point of right to be ſettled before the trials; and offered to debate the ſame; your Committee always anſwered, That they had not any power from your

your Lordſhips, either to confer upon, or to give any anſwer concerning that matter: and yet your Lordſhips, without giving the Commons any ſatisfactory anſwer to the ſaid vote, or permitting any Conference or debate thereupon, and contrary to the ſaid agreement, did, on Thurſday the fourteenth of May, ſend a meſſage to the Commons, declaring, that the Lords Spiritual, as well as Temporal, had ordered, That the twenty-ſeventh of this inſtant May be appointed for the trial of the five Lords: ſo that the Commons cannot but apprehend, that your Lordſhips have not only departed from what was agreed on; and, in effect, laid aſide that Committee which was conſtituted for preſerving a good underſtanding betwixt the two Houſes, and better diſpatch of the weighty affairs now depending in Parliament; but muſt needs conclude, from the ſaid meſſage and vote of your Lordſhips, on the fourteenth of May, that the Lords Spiritual have a right to ſtay, and ſit till the court proceeds to the vote of Guilty or Not guilty: and, from the Biſhops aſking leave (as appears by your Lordſhips books) two days after your ſaid vote, that they might withdraw themſelves from the trial of the ſaid Lords, with liberty of entering their uſual proteſtations; and by their perſiſting ſtill to go on, and give their votes, in proceedings upon the impeachment; that their deſire of leave to withdraw at the ſaid trial, is only an evaſive anſwer to the forementioned vote of the Commons; and chiefly intended as an argument for a right of judicature in proceedings upon impeachments; and as a reaſon to judge of the Earl of Danby's plea of his pardon, and upon thoſe and other like impeachments; although no ſuch power was ever claimed by their predeceſſors, but is utterly denied by the Commons: and the Commons are the rather induced to believe it ſo intended, becauſe the very aſking leave to withdraw ſeems to imply a right to be there; and that they cannot be abſent without it; becauſe, by this way, they would have it in their power, whether or no, for the future, either in the Earl of Danby's caſe, or

any other, they will ever aſk leave to be abſent; and the Temporal Lords a like power of denying leave, if that ſhould be admitted once neceſſary.

The Commons, therefore, are obliged not to proceed to the trial of any of the five Lords, the twenty-ſeventh of this inſtant May, but to adhere to their former vote: and for their ſo doing, beſides what hath been now, and formerly, by them ſaid to your Lordſhips, do offer you, theſe reaſons following: (1.) Becauſe your Lordſhips have received the Earl of Danby's plea of his pardon, with a very long and unuſual proteſtation; wherein he hath aſperſed his Majeſty by falſe ſuggeſtions; as if his Majeſty had commanded or countenanced the crimes he ſtands charged with; and particularly ſuppreſſing and diſcouraging the diſcovery of the plot, and endeavouring to introduce an arbitrary and tyrannical way of government; which remains as a ſcandal upon record againſt his Majeſty, tending to render his perſon and government odious to his people; againſt which it ought to be the principal care of both Houſes to vindicate his Majeſty, by doing juſtice upon the ſaid Earl.

(2.) The ſetting up a pardon to be a bar of an impeachment, defeats the whole uſe and effect of impeachments: for, ſhould this point be admitted, or ſtand doubted, it would totally diſcourage the exhibiting any for the future; whereby the chief inſtitution for the preſervation of the government would be deſtroyed, and conſequently the government itſelf: and therefore the caſe of the ſaid Earl, which in conſequence concerns all impeachments, ought to be determined before that of the ſaid five Lords, which is but their particular caſe.

And, without reſorting to many authorities of greater antiquity, the Commons deſire your Lordſhips to take notice, with the ſame regard they do, of the declaration which that excellent Prince King Charles the Firſt, of bleſſed memory, made in this behalf, in his anſwer to the nineteen propoſitions of both Houſes of

Parliament: wherein, ſtating the ſeveral parts of this regulated monarchy, he ſays, " The King, the Houſe of Lords, and the Houſe of Commons, have each particular privileges:" and, amongſt thoſe which belong to the King, he reckons power of pardoning: after the enumerating of which, and other his prerogatives, his ſaid Majeſty adds thus again, " That the Prince may " not make uſe of this high and perpetual power, to the hurt of " thoſe for whoſe good he hath it; and make uſe of the name of " public neceſſity, for the gain of his private favourites and fol- " lowers, to the detriment of his people."

The Houſe of Commons (an excellent conſerver of liberty) is ſolely entruſted with the firſt propoſitions concerning the levies of monies, and the impeaching of thoſe, who, for their own ends, though countenanced by any ſurreptitiouſly gotten command of the King, have violated that law, which he is bound (when he knows it) to protect; and to the protection of which they are bound to adviſe him, at leaſt not to ſerve him in the contrary:

And the Lords, being entruſted with the judicatory power, are an excellent ſcreen and bank between the Prince and the people, to aſſiſt each againſt any incroachments of the other; and, by juſt judgment, to preſerve that law which ought to be the rule of every one of the three.

Therefore, the power legally placed in both Houſes, is more than ſufficient to preſerve and reſtrain the power of tyranny.

(3.) Until the Commons of England have right done them againſt this plea of pardon, they may juſtly apprehend, that the whole juſtice of the kingdom, in the caſe of the five Lords, may be obſtructed and defeated by pardons of the like nature.

(4.) An impeachment is virtually the voice of every particular ſubject of this kingdom, crying out againſt an oppreſſion, by which every member of that body is equally wounded: and it would prove a matter of ill conſequence, that the univerſality of the people ſhould have occaſion miniſtered and continued to them,

to be apprehenſive of utmoſt danger from the Crown, whereby they of right expect preſervation.

(5.) The Commons exhibited articles of impeachment againſt the Earl of Danby, before any againſt the other five Lords; and demanded judgment upon thoſe articles: whereupon your Lordſhips have appointed the trial of the ſaid Earl before that of the other five Lords; now your Lordſhips having ſince inverted that order, gives a great cauſe of doubt to the Houſe of Commons, and raiſes a jealouſy in the hearts of all the Commons of England, that, if they ſhould proceed upon the trial of the ſaid five Lords in the firſt place, not only juſtice would be obſtructed in the caſe of thoſe Lords, but that they ſhall never have right done them in the matter of the plea of pardon: which is of ſo fatal conſequence to the whole kingdom, and a new device to fruſtrate public juſtice in Parliament.

Which reaſons and matters being duly weighed by your Lordſhips, the Commons doubt not but your Lordſhips will receive ſatisfaction concerning their propoſitions and proceedings; and will agree, that the Commons ought not, nor cannot, without deſerting their truſt, depart from their former vote communicated to your Lordſhips—" That the Lords Spiritual ought not to have " any vote in any proceedings againſt the Lords in the Tower." And, when that matter ſhall be ſettled, and the methods of proceedings adjuſted, the Commons will then be ready to proceed upon the trial of the Earl of Danby, againſt whom they have already demanded judgment; and afterwards to the trial of the other five Lords in the Tower.

APPENDIX,

# APPENDIX, N° 8. (p. 200.)

*Extracts from Lords and Commons Journals, in* 1681, *reſpecting the Impeachment of Fitzharris.*

*Die Sabbati, 26° die Martii,* 1681.

A Meſſage was brought from the Houſe of Commons, by Sir Leolin Jenkins, and others, in theſe words:

"The Commons of England, aſſembled in Parliament, having "received information of divers traitorous practices and deſigns of "Edward Fizharris, have commanded me to impeach the ſaid "Edward Fitzharris of high treaſon: and I do here, in their "names, and in the names of all the Commons of England, im-"peach Edward Fitzharris of high treaſon.

"They have further commanded me to acquaint your Lord-"ſhips, that they will, within convenient time, exhibit to your "Lordſhips the articles of charge againſt him."

Mr. Attorney General gave the Houſe an account of the examinations taken againſt Edward Fitzharris; and ſaid, "He had "an order of the King's, dated the 9th of March inſtant, to pro-"ſecute the ſaid Fitzharris at law; and accordingly he hath pre-"pared an indictment againſt him at law."

And, after a long debate;

The queſtion was put, "Whether Edward Fitzharris ſhall be "proceeded with according to the courſe of the common law, and "not by way of impeachment in Parliament, at this time?"

It was reſolved in the affirmative.

Memorandum, That before the putting the above queſtion, leave was aſked for entering proteſtations; which was granted.

"Diſſentientibus,

" Diſſentientibus,

" Becauſe that in all ages, it hath been an undoubted right of " the Commons to impeach before the Lords any ſubject, for " treaſons or any crime whatſoever; and the reaſon is, becauſe " great offences, that influence the Government, are moſt effec- " tually determined in Parliament.

" We cannot reject the impeachment of the Commons, becauſe " that ſuit or complaint can be determined no where elſe: for if " the party impeached ſhould be indicted in the King's Bench, or " in any other court, for the ſame offence, yet it is not the ſame " ſuit; for an impeachment is at the ſuit of the people, and they " have an intereſt in it; but an indictment is the ſuit of the " King. For one and the ſame offence may entitle ſeveral per- " ſons to ſeveral ſuits; as, if a murder be committed, the King " may indict at his ſuit, or the heir or the wife of the party mur- " dered may bring in an appeal; and the King cannot releaſe " that appeal, nor his indictment prevent the proceedings in the " appeal, becauſe the appeal is the ſuit of the party, and he hath " an intereſt in it.

" It is, as we conceive, an abſolute denial of juſtice, in regard " (as 'tis ſaid before) the ſame ſuit can be tried no where elſe. " The Houſe of Peers, as to impeachments, proceed by virtue of " their judicial power, and not by their legiſlative; and, as to " that, act as a court of record, and can deny ſuitors (eſpecially " the Commons of England) that bring legal complaints before " them, no more than the Juſtices of Weſtminſter Hall, or other " courts, can deny any ſuit, or criminal cauſe, that is regularly " commenced before them.

" Our law ſaith, in the perſon of the King, *Nulli negabimus* " *Juſtitiam*, We will deny juſtice to no ſingle perſon: yet here, " as we apprehend, juſtice is denied to the whole body of the " people.

" And this may be interpreted an exerciſing of an arbitrary power;

" power; and will, as we fear, have influence upon the Conſtitu-
" tion of the Engliſh government, and be an encouragement to all
" inferior courts to exerciſe the ſame arbitrary power, by denying
" the preſentments of grand juries, &c.; for which, at this time,
" the Chief Juſtice ſtands impeached in the Houſe of Peers.

" This proceeding may miſrepreſent the Houſe of Peers to the
" King and people, eſpecially at this time; and the more in
" the particular caſe of Edward Fitzharris, who is publicly
" known to be concerned in vile and horrid treaſons againſt
" his Majeſty, and a great conſpirator in the Popiſh Plot, to
" murder the King, and deſtroy and ſubvert the Proteſtant
" religion.

" Kent,
" Huntingdon,
" Monmouth,
" Bedford, " Saliſbury,
" Pagett,
" Clare, " Eſſex,
" Shafteſbury,
" Sunderland,
" Stamford, " P. Wharton, " Mordaunt,
" Grey,
" C. Cornwallis,
" J. Lovelace,
" Macclesfield, " Herbert,
" Weſtmoreland, " Crewe."

*Commons Journal, 26th of March*, 1681.

THE Houſe being informed, That the Lords had refuſed to proceed upon the impeachment of the Commons againſt Edward Fitzharris; and had directed, that he ſhould be proceeded againſt at the common law;

And

And a debate ariſing in the Houſe thereupon;

Reſolved, That it is the undoubted right of the Commons in Parliament aſſembled, to impeach, before the Lords in Parliament, any Peer or Commoner for treaſon, or any other crime or miſdemeanor: and that the refuſal of the Lords to proceed in Parliament upon ſuch impeachment is a denial of juſtice, and a violation of the conſtitution of Parliaments.

Reſolved, That in the caſe of Edward Fitzharris, who, by the Commons, had been impeached for high treaſon before the Lords, with a declaration, that in convenient time they would bring up the articles againſt him—for the Lords to reſolve, that the ſaid Edward Fitzharris ſhould be proceeded with according to the courſe of the common law, and not by way of impeachment in Parliament, at this time, is a denial of juſtice, and a violation of the conſtitution of Parliaments, and an obſtruction to the further diſcovery of the Popiſh Plot, and of great danger to his Majeſty's perſon, and the Proteſtant religion.

Reſolved, That for any inferior court to proceed againſt Edward Fitzharris, or any other perſon, lying under an impeachment in Parliament, for the ſame crimes for which he or they ſtand impeached, is a high breach of the privilege of Parliament.

APPENDIX,

# APPENDIX, N° 9. (p. 36, and 210.)

*Extracts from the Lords Journal, on the Impeachment of Lord Mordaunt, in* 1666.

*Die Veneris, 1° die Februarii,* 1666.

A Meſſage was brought from the Houſe of Commons, by Mr. Seymour, and others:

To deſire a Conference touching the manner of the proceedings upon the impeachment againſt the Lord Viſcount Mordaunt.

The anſwer returned was:

That their Lordſhips have taken their meſſage into conſideration, and will ſend an anſwer by meſſengers of their own.

Upon this meſſage it is ordered, That the Committee for privileges do meet to-morrow in the afternoon, and conſider whether ever the Houſe of Commons deſired any Conferences concerning the manner of proceeding upon judicature before their Lordſhips; and to ſearch what meſſages and proceedings have been upon caſes of judicature; and to report the ſame to this Houſe.

*Die Lunæ, 4° die Februarii.*

THE Lord Chamberlain reported, "That the Committee of "Privileges have conſidered of ſome precedents concerning the "meſſage from the Houſe of Commons, concerning the manner "of proceeding upon the impeachment againſt the Lord Viſcount "Mordaunt; and their Lordſhips opinion is, That none of thoſe "precedents they have ſeen do come home to the buſineſs; but,

" the precedents being ready, they leave it to their Lordſhips " pleaſure, whether to peruſe any of them."

The Houſe commanded theſe precedents following to be read; as, *Primo Jacobi*, 26 *Maii*; a meſſage from the Houſe of Commons, concerning the Biſhop of Briſtol, who was complained of for writing a book againſt the Union of England and Scotland; and, *ultimo Maii*, there was a meeting between Select Committees of both Houſes about the ſame; and 5th of June, the ſaid Biſhop made an acknowledgment of his error, before a Committee of both Houſes.

Another precedent was in 12° *Jacobi*, 28th May; a meſſage was * brought from the Houſe of Commons, againſt the Biſhop of Lyncolne, for ſome words he ſpoke in the Lords Houſe.

The 4th of June, another meſſage was brought from the Houſe of Commons, againſt that buſineſs.

After a ſerious conſideration and debate;

The queſtion being put, " Whether to grant a Conference " with the Houſe of Commons, upon the deſire of a late meſſage † " from the Houſe of Commons, concerning the manner of " proceedings upon the impeachment of Lord Viſcount Mor- " daunt;"

It was reſolved in the affirmative.

Memorandum, That theſe Lords following, before the putting of the aforeſaid queſtion, deſired leave to enter their diſſents, if the queſtion was carried in the affirmative: which was granted; and accordingly entered their diſſents, as followeth:

" The reaſon why we have deſired the leave of the Lords to " enter our diſſents to the foregoing vote is, becauſe we believe " the conferring with the Houſe of Commons, upon a matter only " relating to the manner of proceedings in judicature, as we

* Deeſt in Originali. † Origin. with.

" humbly

" humbly conceive this to be, is a very great derogation to the " privileges of this Houſe. We do therefore enter our diſſents " accordingly.

" Dorcheſter, J. Bridgewater, Howard of Ch."

A meſſage was ſent to the Houſe of Commons, by Sir William Child and Sir Juſtinian Lewin:

To let them know, that their Lordſhips are now ready to give them a preſent Conference, in the Painted Chamber, by a Committee of both Houſes, touching their meſſage concerning the impeachment againſt the Lord Viſcount Mordaunt.

The meſſengers returned this anſwer:

That they have delivered their meſſage to the Houſe of Commons.

The Houſe of Commons being ready, this Houſe was adjourned during pleaſure, and the Lords went to the Conference; which being ended, the Houſe was reſumed.

The Earl of Angleſey reported the effect of the late Conference with the Houſe of Commons, concerning the buſineſs of the Lord Viſcount Mordaunt's impeachment:—

" The Commons of England, in Parliament aſſembled, deſired " this Conference, to continue a good correſpondency betwixt " the two Houſes, and to preſerve the ancient manner of pro- " ceedings in Parliament, in taking notice of their Lordſhips laſt " anſwer, 'adjudging it a right inherent in every court, to order " and direct ſuch circumſtances, and matters of form, that can have " no influence to the prejudice of juſtice, in ſuch a way as they " ſhall judge fit, where the ſame are not ſettled otherwiſe by any " poſitive rule.'

" The Commons conceive, that the firſt part, the admitting " the Lord Mordaunt to the place now given him upon his trial, " may have influence to the prejudice of juſtice, by the in- " timidating of witneſſes, when they ſhall ſee the Lord Mor- " daunt admitted to ſo extraordinary a favour, being a perſon

" of great command, and divers of the witneſſes living under his " command.

" As to the other part of the Lords anſwer, ' That all courts " have power to ſettle circumſtances in matter of form, that " have no influence to the prejudice of juſtice, in ſuch way as they " ſhall judge fit, where it is not ſettled by any poſitive rule;' " the Commons conceive that precedents amount to a poſitive " rule; and the manner of perſons accuſed appearing at their " trials was ſettled in the Earl of Middleſex's caſe before cited, and " that was ruled by the ſearch of precedents.

And they added, that, as they are very tender of the rights " and privileges of their Lordſhips, ſo they hope their Lordſhips " will be of theirs; and concluded, that when this point of form " ſhall be ſettled, by the Lord Mordaunt's coming to the Bar, they " ſhall be ready, according to their Lordſhips wiſh, to proceed to " matter of ſubſtance."

Upon ſerious conſideration hereof, the Houſe reſolved, To let the Houſe of Commons know, the Lords are reſolved, that their former anſwer, given to the Houſe of Commons the 28th day of January laſt, and confirmed the 31ſt of January, ſhall ſtand; and a Conference to be deſired, wherein the Lords that are to manage the Conference are to ſignify their Lordſhips continuance of their former order: in which their Lordſhips are further confirmed by the precedent of the Biſhop of Llandaph's caſe, 18° *Jacobi*, and the Earl of Stamford's caſe, 1645; and to let them know further, that their Lordſhips will be ready to-morrow morning to proceed in the buſineſs.

A meſſage was ſent to the Houſe of Commons, by Sir William Child and Sir Juſtinian Lewin:

To let them know, that this Houſe intends to ſit this afternoon, at five of the clock; at which time their Lordſhips deſire a Conference, by a Committee of both Houſes, in the Painted Chamber,

Chamber, concerning the ſubject-matter of the laſt Conference, touching the impeachment of the Lord Viſcount Mordaunt.

*Die Lunæ, 4° die Februarii, poſt Meridiem.*

THE meſſengers ſent to the Houſe of Commons return with this anſwer:

That the Commons will give a Conference, as was deſired this morning.

The Houſe was adjourned during pleaſure, and the Lords went to the Conference; which being ended, the Houſe was reſumed.

And the Earl of Angleſey reported, "That the Lords that "managed this Conference had obeyed their Lordſhip's direc- "tion, in urging thoſe precedents as were given them in charge."

*Die Martis, 5° die Februarii.*

A MESSAGE was brought from the Houſe of Commons, by Sir Robert Holt, and others; who ſaid, "He was commanded "by the Commons to deſire a Free Conference, upon the ſubject- "matter of the laſt Conference, concerning the impeachment "againſt the Lord Viſcount Mordaunt."

The Houſe taking this meſſage into ſerious conſideration;

And, after a long debate,

The queſtion being put, "Whether to grant a Free "Conference to the Houſe of Commons in this mat- "ter;"

It was reſolved in the negative.

Theſe Lords following, before the putting of the aboveſaid queſtion, deſired leave to enter their diſſents, if the queſtion was carried

carried in the negative: which was granted; and accordingly do enter their diſſents, by ſubſcribing their names.

* J. Robertes,
* Baſil Denbigh,
Northampton,
* Bolingbroke,
Lindſey,
Awdley.

" The denial of a Conference, which is the only way of keep-
" ing a good and right correſpondency between the two Houſes
" of Parliament, being ever unfit; I enter my diſſent.

" Dover."

The meſſengers of the Houſe of Commons being called in; the Speaker, by directions of the Houſe, gave them this anſwer:

" That the Lords have already ſtated the manner of proceed-
" ings in the impeachment of the Lord Mordaunt; and have
" declared it in their laſt Conference, and in that Conference
" gave the Houſe of Commons notice that they were ready to
" proceed this morning in that buſineſs; they adhere to their
" former reſolution, and are ready to proceed in the trial."

*Die Mercurii, 6° die Februarii.*

A MESSAGE was brought from the Houſe of Commons, by Sir Robert Atkins and others:

To deſire a Conference, upon an anſwer delivered to their meſſengers, who deſired a Free Conference with their Lordſhips, upon the impeachment of the Lord Viſcount Mordaunt.

The anſwer returned was:

That their Lordſhips will take their meſſage into conſideration, and will ſend an anſwer by meſſengers of their own.

* Theſe three names are twice entered; being wrote by the Clerk, as well as ſigned by the Peers.

*Die*

*Die Jovis, 7° die Februarii.*

A MESSAGE was ſent to the Houſe of Commons, by Sir William Childe and Sir Nathaniell Hobart:

To let them know, that the Lords will be ready to give a Conference, by a Committee of both Houſes, at eleven of the clock, in the Painted Chamber, upon the matter they deſired a Conference yeſterday.

The meſſengers ſent to the Houſe of Commons return this anſwer:

That they will come to the Conference, as is deſired.

Theſe Lords following were appointed to report this Conference:

| | | |
|---|---|---|
| Comes Bridgwater, | Epus. Exon. | Ds. Lucas. |
| Comes Denbigh. | Epus. Rocheſter, | Ds. Aſhley. |
| Comes Angleſey. | | |

The Commons being come, the Houſe was adjourned during pleaſure, and the Lords went to the Conference; which being ended, the Houſe was reſumed.

The Earl of Angleſey reported the effect of the Conference with the Houſe of Commons, which was managed by Sir Robert Atkins; who ſaid, "That the Houſe of Commons have deſired "this Conference concerning their Lordſhips anſwer to a meſſage "concerning a Free Conference. In their Lordſhips anſwer, in "effect, their Lordſhips denied a Free Conference. He ſaid, he "was commanded to acquaint their Lordſhips, That Conferences, "and Free Conferences, when deſired, are eſſential to the pro-"ceedings of Parliament, the only means to preſerve the good "correſpondence between the two Houſes of Parliament; and "the denial thereof, deſtructive to the proceedings of Parliament, "and unprecedented."

Upon a ſerious debate hereof;

The queſtion being put, "Whether to deſire a Free "Conference from the Houſe of Commons, upon the "ſubject-matter of the laſt Conference;"

It was reſolved in the affirmative.

A meſſage was ſent to the Houſe of Commons, by Sir William Childe and Sir Nathaniell Hobart:

To deſire a preſent Free Conference, in the Painted Chamber, by a Committee of both Houſes, concerning the ſubject-matter of their laſt Conference.

The meſſengers return with this anſwer:

That the Houſe of Commons will give a Free Conference as is deſired.

The ſame Lords as reported the laſt Conference, are appointed to manage this Free Conference; and the Houſe gave them theſe directions:

"Firſt, To let the Commons underſtand, that this Conference "their Lordſhips deſire, not in reference to the Free Conference "lately deſired by them, but in relation to the aſſertion of the "Commons in their laſt Conference, which their Lordſhips can no "way allow; and therefore commanded the Lords that are to "manage this Free Conference, to juſtify the proceedings of their "Lordſhips, ſo as to make it appear to the Houſe of Commons "that what they have done is neither deſtructive to the proceed-"ings of Parliament, nor unprecedented.

"Then to ſhew the precedent of the 1ſt of Henry the IVth, "N° 79, about judicature in Parliament.

"And to urge the precedent of 12 *Jacobi*, when the Lords "denied a Conference to the Houſe of Commons upon the point "of impoſitions *.

"And their Lordſhips are to offer what other arguments they

* See the Lords Journals, 26th May, 1614.

"think

" think fit to offer, to aſſert the proceedings of this Houſe, and to " deſtroy the aſſertions of the Houſe of Commons."

Then the Houſe was adjourned during pleaſure, and the Lords went to the Conference; which being ended, the Houſe was reſumed.

Memorandum, That, before the putting of the queſtion, " Whe- " ther the Lords ſhould give a Free Conference to the Houſe of " Commons upon the ſubject-matter of the laſt Conference," the Earl of Bridgewater deſired leave to enter his diſſent, if the queſtion was carried in the affirmative: which being granted, he accordingly entered his diſſent, by ſubſcribing his name, " Becauſe " the Conference granted was not a bare Conference, but a Free " Conference. " J. Bridgewater."

The Earl of Angleſey reported, " That the Lords, that were " appointed to manage the laſt Free Conference, have kept to " their Lordſhips directions; and did juſtify the proceedings of " their Lordſhips, and made it appear to the Houſe of Commons, " that what their Lordſhips had done is neither deſtructive to " the proceedings of Parliament, nor unprecedented; wherein " they took this method:

" Firſt, They took notice, that their Lordſhips deſired this " Conference, not in reference to the Free Conference lately " deſired by the Commons, but in relation to the aſſertion or " poſition of the Commons in their laſt Conference, this morn- " ing, which their Lordſhips could no way allow; for that their " Lordſhips had proceeded with great juſtice and caution in this " affair, and little expected that, after their Lordſhips had upon " three ſolemn debates, two whereof were upon Conferences, " given the ſame rule thrice, the Houſe of Commons ſhould in- " ſiſt further, and that in ſo poſitive a way as their laſt Con- " ference imported; whereupon their Lordſhips, being deſirous " to part with that Houſe in that good union and fair corre-

" ſpondence with which this ſeſſion began, and underſtanding
" that his Majeſty intended to prorogue the Parliament to-mor-
" row, that there might not want time, but the Commons might
" have opportunity of free debate, and receive ſatisfaction, their
" Lordſhips had thus preſently appointed them a Free Confe-
" rence, upon their own aſſertion, wherein, by the freedom their
" Lordſhips ſhall uſe, the Commons will have a proof of their
" kindneſs, and deſire of good intelligence.

" Thereupon their Lordſhips urged, that what they had done
" in this cauſe (which the Commons called denying in effect a
" Free Conference) was ſo far from being deſtructive to the pro-
" ceedings of Parliament, that their Lordſhips conceived it
" eſſential to the preſerving thereof; judicature in Parliament,
" by the Parliament Roll of the 1ſt of Henry the IVth, N° 79,
" belonging only to that Houſe, and not to the Commons; and
" this by proteſtation of the Commons themſelves. If judg-
" ment the principal, much more all circumſtances, and the rul-
" ing of proceedings leading thereto; a right inherent in all
" courts, without which no judicature can proceed. And ſhall
" this be denied to this, the higheſt court? or ſhall it be in the
" power of the Houſe of Commons to confer, as long as they
" pleaſe, upon circumſtantials and matters of form, to the loſing
" of the ſubſtance? If this ſhould be allowed, it would render it
" impoſſible for the Lords to do juſtice, either in condemning or
" acquitting; but the Commons might, if they pleaſe, delay in
" Conferences upon forms, till the very delay, by the charge of
" counſel and witneſſes, prove a puniſhment before trial, and ſo
" judicature in Parliament prove a grievance and oppreſſion to the
" ſubject, inſtead of juſtice. If three rules, given ſo ſolemnly as
" aforeſaid, ſhall not conclude, where ſhall debates period? Their
" Lordſhips are ſo far from accounting judicature, a right and pri-
" vilege worth the inſiſting on upon ſuch terms, that they had
" rather ſee it fairly buried, than ſo to enjoy it, when they can



" neither

" neither juſtly puniſh nor acquit perſons accuſed; and, after hav-
" ing delivered their own judgment, upon as full and free debates
" and conſideration as they are capable of, to be further preſſed,
" looks too like an importunity that former times have not been
" ſo unhappy as to meet with, and they little expected from this
" Houſe of Commons. And their Lordſhips are confident, that
" Houſe intended no attempt upon their Lordſhips judicature.
" Other arguments were uſed againſt the firſt part of the Com-
" mons aſſertion.

" As to the ſecond part of the aſſertion, that it was unprece-
" dented, their Lordſhips evinced the contrary by the precedent
" of 12 *Jacobi*, produced and urged for the denial of a Conference
" to the Houſe of Commons upon the point of Impoſition, the
" darling ſubject of debates in that Houſe, and whereon they
" might beſt of any thing inſiſt to confer. Their Lordſhips
" doubted not, if they had taken time, more precedents would
" occur; but one was ſufficient to deſtroy their general aſſertion.

" The Commons hereupon, videlicet, Sir Robert Atkyns, Mr.
" Waller, Sir Thomas Meres, and Sir Francis Goodricke, by turns,
" told us, ' It would be too great a diſregard to what we had ſo
" fully offered, to make any preſent anſwer, or give their own
" ſenſe to what their Lordſhips had delivered; beſides, they were
" not provided, nor inſtructed, to diſcourſe this matter now, be-
" ing unexpected; and that they conceived a Conference ought
" regularly to have been deſired by the Lords before this Free
" Conference, that they might have been convinced with the
" Lords reaſons, or had ſome point iſſued to treat and confer
" upon.'

" To that the Lords replied, ' That they were not now to diſ-
" pute that; the Commons, having agreed to a Free Conference,
" allowed it to be regular, and they doubted not many precedents
" warranted it; but, if they had conceived otherwiſe, the Houſe
" of Commons might have declined it.'

" The Commons acknowledged, 'That they had it in debate in " their Houſe; but finding that, if they had refuſed us a Free " Conference, they had done the ſame thing they took exception " at in our proceedings, they had agreed to our deſire; and, in- " ſiſting again that they were not provided to confer upon what " we had argued ſo largely, they deſired leave to reſort to their " Houſe, to acquaint the Commons with the particulars delivered " by the Lords, and receive their directions; and according to " what further order they ſhould receive, they would attend their " Lordſhips.'

" The Lords ſaid, 'They could not but wonder to ſee them " wave a Free Conferring upon an aſſertion of their own, ſtated " at the laſt Conference by themſelves, and being the whole " matter then delivered, and that ſo poſitively, that ſure it was " done upon ſome debate and conſideration. We conceived we had " given them an advantage, by appointing a Free Conference imme- " diately upon their own Conference; but were ſo well aſſured of " our juſt and warranted proceedings, that they might ſee we were " ready to aſſert them by arguments, precedents, and debate. If " the Commons were not now ready, the failing was not on our " part, and they might uſe their liberty; concluding, that we had, " by this Conference, manifeſted our deſires of cloſing with a " fair correſpondence, when we undertook a Free Conference on " the ſudden, upon ſome diſadvantage.' And ſo, with mutual " expreſſions of kindneſs, we parted; the Commons deſiring to " have the liberty to peruſe the Journal of 12 *Jacobi*, wherein the " precedent is that was cited by their Lordſhips; which we pro- " miſed them."

APPENDIX,

# APPENDIX, N° 10. (p. 252.)

*Lord Rocheſter's Report of Precedents of Impeachments, from the Journals and Records in the Tower.*

*Die Martis, 2° die Julii,* 1689. Lords Journals.

THE Earl of Rocheſter reported what precedents the Committee have found in the Journals, relating to impeachments, and records in the Tower. Precedents of impeachments.

" 26° Martii, 1681. Edward Fitzharris was impeached of High " Fitzharris.
" Treaſon; but no articles were brought up againſt him.

" Mr. Attorney General acquainted the Houſe of the exami-
" nations taken againſt him; and that he had an order of the
" King's, dated the 9th of March inſtant, to proſecute him at
" law.

" Reſolved, he ſhall be proceeded with at common law.

" 7° Januarii, 1680. The Earl Tyrone impeached of High " Earl of Tyrone.
" Treaſon. No articles brought up. The Parliament prorogued
" two days after; ſo no further proceedings.

" 7° Januarii, 1680. Sir William Scroggs impeached of treaſon " Scroggs.
" and miſdemeanors, and articles brought up; one whereof was a
" general article of treaſon, for endeavouring to ſubvert the fun-
" damental laws of the kingdom, without ſpecifying any particu-
" lar fact. He gives £. 10,000 bail for his appearance, and two
" ſureties with £. 5,000 apiece. No further proceedings *.

" 21° Decembr. 1680. Edward Seymour, Eſquire, impeached " Seymour.

* This is a great miſtake. See before the caſe of Sir William Scroggs, N° 54. p. 199, and N° 3. p. 253 and 254, with the note.

" of

" of high crimes and miſdemeanors, and the articles brought up " againſt him. He is called in, hears the articles read, and is or- " dered to put in an anſwer.

" 23° Decembr. He delivered in his anſwer, which was read. " No further proceedings.

" Penn. " 24° April, 1668. Sir William Penn impeached of ſeveral " high crimes and miſdemeanors. The articles delivered at a " Conference, and Sir William Penn required to appear at the " Bar.

" Drake. " 6° Decembr. 1660. William Drake impeached for writing a " ſcandalous, ſeditious, and wicked pamphlet.

" 11° Decembr. Ordered to be brought to the Bar.

" 19° Decembr. The Lords declare, that if this Parliament be " diſſolved before that they ſhall have time to give judgment " againſt the ſaid Drake, that then the King's Attorney do " proceed againſt him.

" The Lords apprehending they may not have time, before " their diſſolution, to proceed in judicature againſt him, ordered, " That Mr. Attorney do, in his Majeſty's name, proceed againſt " him in the King's Bench.

" Radcliffe. " 29° Decembr. 1640. Sir George Radcliffe impeached of " treaſon; but no articles brought up.

" 31° Decembr. Articles were delivered againſt him, at a " Conference; one whereof was, That he had traitorouſly con- " ſpired and confederated with the Earl of Strafford, to ſubvert " the fundamental laws and government of the realms of Eng- " land and Ireland, and to introduce an arbitrary and tyrannical " government, againſt laws; and hath been a counſellor, actor, " and abettor, in that wicked and traitorous deſign of bringing the " Iriſh army into England, to compel the ſubjects of this king- " dom to ſubmit thereunto. He was brought to the Bar, and, at " his requeſt, had counſel allowed him.

" 12° Februarii,

" 12° Februarii, 1640. Sir Robert Berkley was impeached by " Juſtice Berkley.
" the Commons of treaſon. No articles then brought up. He
" was committed to the Chief Sheriff of London.

" 6° Julii, 1641. A charge was delivered, at a Conference,
" againſt him; but not entered in the Journal.

" 26° Octobr. 1641. He gives in his anſwer, petitions for
" counſel, and a warrant for witneſſes; and that he may have
" liberty, with a keeper, to go to Serjeants Inn, to peruſe his
" papers there.

" 29° April, 1643. A Meſſage from the Commons, That
" whereas the Commons have brought up impeachments againſt
" divers of the Judges, ſome of High Treaſon, and ſome for high
" crimes and miſdemeanors; the Commons deſire to have a
" ſpeedy day appointed, wherein they may come and demand
" judgment againſt the ſaid Judges, for the judgment touching
" ſhip-money only.

" Ordered, That Mr. Juſtice Berkley ſhall be tried for the
" matters of ſhip-money only.

" 18° Decembr. 1641. Daniel O'Neale, accuſed of High Trea- " O'Neale.
" ſon by the Commons. No articles brought up. He was com-
" mitted to the Gatehouſe.

" 26° Januar. 1641. He is removed from the Gatehouſe to the
" Tower.

" 18° Decembr. 1640. William Laud, Archbiſhop of Canter- " Arch. Cant.
" bury, impeached by the Commons of High Treaſon. No ar-
" ticles then brought up. He is committed to the Black Rod,
" till he hath cleared himſelf of this accuſation.

" 3° Martii, 1620. A meſſage from the Commons, concerning " Mompeſſon.
" Sir Giles Mompeſſon's being fled; whereupon a proclamation
" was iſſued for the apprehending him. No articles were brought
" up againſt him.

" *Rot.*

" *Rot. Parl.* 4° Ed. III. (N° 2.)

" SEVERAL judgments for High Treaſon were given againſt " ſeveral Commoners by the Lords.

" * *Rot. Parl.* 4° Ed. III. (N° 2.)

" Judicium Simonis de Bereford.

" ITEM, in meſme le Parlement, ſi chargea n're Seign. le " Roi, les ditz Countes, Barouns, et Peres, a doner droit et loial " juggement, come affiert, a Simon de Bereford, Chivaler, q'eſtoit " eidant et conſeillant au dit Roger de Mortimer en totes les " treſons, felonies, et malveiſtes, pur leſqueles le avandit Roger " iſſint fuſt agarde et ajuge a la mort, come conue † choſe et no- " toire eſt as ditz Peres a ce q' le Roi entent; leſqueux Countes, " Barons, et Peres revyndrent devant n're Seign. le Roi en meſme " le Parlement, et diſoient touz come d'une voice, qu' l'avant dit " Simon ne feuſt pas lour Pere, par qoi eux ne furent pas tenuz a " jugger luy come Pere de la Terre: mes pur ce q' notoire choſe " eſt, et conue a touz, q' l'avant dit Simon eſtoit aidant et con- " ſeillant au dit Roger en totes les treſons, felonies, et malveiſtes " ſuſditz, leſqueles choſes ſont en purpris de Roial Poer, murdre " de Seign. Lige, et deſtruction du Sank Real, et q'il eſtoit auxint " coupable d'autres div'ſes felonies et robberies, et principall " meyntenour de robbeours et felouns, ſi agarderent et ajuggerent " [‡ les ditz] Countes, Barouns, et Peres, come Jugges du Par- " lement par aſſent du Roy en meſme le Parlement, q' le dit " Simon, come treitre et enemy du Roy et du Roialme, feuſt " treyne et pendu: et ſur ce eſtoit command a mareſchal a faire " l'execuc'on du dit juggement; laquele execution fuſt fait " et perfourny le Lundy prochein apres la Feſte de Seint Thomas " l'Apoſtle.

* Rot. Parl. Vol. II. p. 53. † Origin. come. ‡ Bis in originali.

" Tres

" Tres touz les Peres, Countes, et Barouns aſſemblez a ceſte " Parlement a Weſtm. ſi on examine eſtraitement, et ſur ce ſont " aſſentuz et acordez, q' Johan Mautravers ſi eſt cupable de la " mort Eſmon Counte de Kent, le uncle n're Seign. le Roi q'ore " eſt, come celui q' principaument, traiterouſement, et fauſſement, " la morte le dit Counte compaſſa, iſſint q' la ou le dit Johan * " ſavoit la mort le Roi Edward; ne pur quant le dit Johan, par " enginouſe manere et par ſes fauſſes et mauveiſe ſotinetes, fiſt le " dit Counte entendre la vie le Roi, lequel faus compaſſement fuſt " cauſe de la mort le dit Counte, de tut le mal q' s'enſuit: par " quoi les ſuſditz Peres de la Terre et Juges du Parlement, " ajuggent et agardent q' le dit Johan ſoit treyne, pendu, et " decolle, come treiture, queu part q'il ſoit trove: et prient les " Peres ſuſditz a n're Seign. le Roi, q'il voille commander q' " briefs ſoient faitz, de faire publier et crier par tut le Roialme, " q' qi purra prendre le dit Johan vif, et le meſne au Roi, il " auera M. marcs; et ſi par cas ne purra eſtre pris vif, q' qi porte " ſa teſt, il auera D. l. du doun le Roi.

" Judicium Joh'is Mautravers. 3.

" Eſtre ce, au tiel juggement eſt acorde, q' ſoit fait de Boeges " de Bayons et Johan Deveroil, par la cauſe ſuſdite; et qe qi " purra prendre le dit Boeges vif, et meſne au Roi, auera Cl. ou " q' porte la teſte, il auera cent marcz; et q' qi purra prendre le " dit Johan vif, et meſne au Roi, auera C. marcz, et qi q' port la " teſte, auera xl. l. du doun le Roi.

" Judicium Bogonis de Bayons et Joh'is Deveroil.

" Item, a tieu juggement eſt aſſentuz et accorde de Thomas " de Gourney et William de Ocle, pur la mort le Roi Edward " Pier n're Seign. le Roi, q' ore eſt q' fauxement et traiterouſe- " ment lui murdrerunt; et q' qi puiſſe prendre le dit Thomas " vif, auera Cl. et q' qi porte la teſte C. marcz; eſtre ce q' qi " puiſſe prendre le dit William vif, auera C. marcz; et qi q'

" Judicium Thome de Gourney & Will'i de Ocle.

* Origin. Savoil.

" porte la teſte, ſi par cas ne puiſſe eſtre pris vif, il auera xl l. du
" doun le Roi.

" *Rot. Parl.* 4° Ed. III. (N° 6.)

" Concordia ne trahatur in conſequentiam.

" ET eſt aſſentu et accorde, par n're Seign. le Roi et touz
" les grantz en pleyn Parlement, q' tut ſoit il les ditz Peres, come
" Juges du Parlement, empriſtrent en la preſence n're Seign. le
" Roi, a faire et a rendre les ditz juggementz par aſſent du Roi
" ſur aucuns de ceux q' n'eſtoient pas lur Peres, et ce par
" encheſon du murdre de Seign. lige et deſtruction de celui q' fu
" ſi pres de Sank Roial et Fitz du Roi: q' par tant les ditz Peres
" q' ore ſont, ou les Peres q' ſerront en temps avenir, ne ſoient mes
" tenuz ne chargez a rendre jugementz ſur autres q' ſur lour
" Peres, ne a ce faire; mes cient les Peres de la terre poer eins de
" ce pour touz jours ſoient diſchargez et quietz; et q' les avanditz
" jugementz ore renduz ne ſoient tret en enſample n'en conſe-
" quence en temps avenir, par qoi ſez ditz Peres puſſent eſtre
" chargez deſore a jugger autres q' lur Peres contre la lei de la
" terre; ſi au tiel cas aveigne, q' Dieu defend."

After the reading the copy of the aboveſaid record, which was affirmed by one of the Peers to be authentic, he having examined it with the roll; and debate thereupon;

Queſtion to the Judges, Whether this record is a ſtatute? and

This queſtion was aſked the Judges, " Whether the ſaid record
" is a ſtatute?"

The Judges anſwer, " As it appears to them by the aforeſaid
" copy, they believe it is a ſtatute; but if they ſaw the roll itſelf,
" they could be more poſitive therein."

And, after further debate,

Whether the Lords are barred from trying a Commoner on an impeachment?

This queſtion was propoſed to be aſked the Judges;

" Whether the Lords, by this ſtatute, be barred from trying
" a Commoner upon an impeachment of the Houſe of Com-
" mons?"

Then

Then this previous queſtion was put, " Whether that queſtion ſhall be put to the Judges ?"

It was reſolved in the negative.

And, after further debate,

This queſtion was put, " Whether this Houſe will proceed " upon the impeachment brought from the Houſe of Commons " againſt Sir Adam Blaire, Captain Henry Vaughan, Captain " Frederick Mole, John Elliott, Doctor in Phyſic, and Robert " Gray, Doctor in Phyſic?"

Lords will proceed upon the impeachment againſt Sir A. Blair, Captain Vaughan, & al.

It was reſolved in the affirmative.

# APPENDIX, N° 11. (p. 259.)

*Extracts from Commons Journals, of Conferences, &c. reſpecting convenient Accommodations being provided for the Members to be preſent at the Trial of John Goudet, and others.*

*Mercurii, 15° die Junii,* 1698.

SIR Rowland Gwyn reported from the Committee appointed to draw up what ſhall be offered at a Conference with the Lords, upon the ſubject-matter of their Lordſhips meſſage, the 9th inſtant, relating to the trial of John Goudet and others, upon the impeachments againſt them, That they had drawn up the ſame accordingly; which he read in his place; and afterwards delivered in at the Clerk's table; where the ſame was twice read, and agreed unto by the Houſe; and is as followeth; viz.

That the Commons, having a right, at trials upon impeachments, to come as a Houſe, or by a Committee, as they ſhall think fit, have always had a convenient accommodation prepared for them, as in the caſes of the Earl of Strafford, and the Lord Viſcount Stafford: and therefore may juſtly expect a convenient place may be appointed for the Managers of the impeachments againſt John Goudet, and others; whereby they may be the better enabled to make good their charge againſt them.

Ordered, That Sir Rowland Gwyn do go to the Lords, and deſire the ſaid Conference.

Sir Rowland Gwyn reported, That he having been at the Lords, to deſire the ſaid Conference, they do agree to a Conference preſently, in the Painted Chamber.

Ordered,

Ordered, That the ſame Committee do manage the ſaid Conference.

And they went to the Conference.

And being returned;

Sir Rowland Gwyn reported, That they had been at the Conference, and delivered to the Lords what they had in charge.

*Jovis, 16° die Junii.*

A MESSAGE from the Lords, by Sir Miles Cook and Sir Robert Legard:

Mr. Speaker,

The Lords do deſire a preſent Conference with this Houſe, in the Painted Chamber, upon the ſubject-matter of the laſt Conference.

Reſolved, That the Houſe do agree to a preſent Conference, as the Lords do deſire.

And the meſſengers were called in again, and Mr. Speaker acquainted them therewith.

Ordered, That the Committee who managed the laſt Conference, do manage this Conference.

And they went to the Conference.

And being returned;

Sir Rowland Gwyn reported the Conference: that the ſame was managed by the Earl of Rocheſter; who ſaid, That the Lords have deſired this Conference with the Houſe of Commons, in order to continue that good correſpondence, which they will always endeavour to preſerve between the two Houſes; and, having given inſtances of their compliance upon ſeveral occaſions, the ſincerity of their intentions, towards that end, cannot be doubted: but if, at this time, they cannot conſent to what the Commons deſire, they hope, that even their diſagreeing in this point

point may tend to a better correſpondence for the future; their Lordſhips conceiving, that in all proceedings between the two Houſes, thoſe methods that have been conſtantly practiſed are the leaſt liable to objections; and that the conſenting to any one innovation, in ſuch caſes, may occaſion further diſputes. And whereas the Commons have inſtanced, that in the trials of the Earl of Strafford, and the Lord Viſcount Stafford, they had a convenient place appointed for their Managers, their Lordſhips muſt obſerve, that both thoſe trials were for High Treaſon, and in Weſtminſter Hall: but, upon all trials for miſdemeanors, which have been conſtantly at the Bar of their Lordſhips Houſe, there is not one precedent in their books, that the Houſe of Commons have ever, till this time, aſked what they have deſired upon this occaſion; and therefore, their Lordſhips do inſiſt on their reſolution, ſignified to the Houſe of Commons, by a meſſage delivered to them on the ninth inſtant, in which they did acquaint them, That their Lordſhips having looked into Precedents, do find, that at trials upon impeachments at the Bar of the Houſe of Lords, the Committee of the Houſe of Commons, appointed to manage the evidence, have always come to the Bar of the Houſe, without any other proviſion for them; and their Lordſhips intend to proceed in the ſame manner, as hath been uſual at all trials within their Houſe.

Reſolved, That this Houſe will, to-morrow morning, take the ſaid report into conſideration.

*Veneris*, 17° *die Junii.*

THE Houſe proceeded to take into conſideration the report of the Conference yeſterday with the Lords.

Reſolved, That this Houſe doth inſiſt upon their having a convenient place appointed for the Managers of the impeachments againſt

againſt John Goudet, and others; whereby they may be the better enabled to make good their charge againſt them.

Reſolved, That a Free Conference be deſired with the Lords, upon the ſubject-matter of the laſt Conference.

Ordered, That Sir Rowland Gwyn do go to the Lords, and deſire the ſaid Free Conference.

Ordered, That the Committee appointed to manage the laſt Conference do meet this afternoon, and prepare themſelves for the ſaid Free Conference; and that Sir Chr. Muſgrave, Mr. Harcourt, Lord Conningſby, Sir Joſeph Jekyll, Mr. Methwen, and Sir Robert Rich, be added to the ſaid Committee.

*Lunæ*, 20° *die Junii.*

RESOLVED, That this Houſe will be preſent at the trial of John Goudet and others, upon the impeachments againſt them, as a Committee of the whole Houſe; in regard the matter is of great conſequence to the trade of the kingdom.

Sir Rowland Gwyn acquainted the Houſe, That he had not, as yet, deſired a Free Conference with the Lords upon the ſubject-matter of the laſt Conference; by reaſon the Lords did, upon Friday laſt, adjourn till this day.

Sir Rowland Gwyn reported, That he having, according to order, been at the Lords, to deſire a Free Conference, upon the ſubject-matter of the laſt Conference, they do agree thereunto, to-morrow at one o'clock, in the Painted Chamber.

*Martis*, 21° *die Junii.*

THE Managers appointed went to the Free Conference with the Lords:

And being returned;

Sir

Sir Rowland Gwyn reported, That the Managers had attended the Free Conference, and that the ſame having been long, it would take ſome time for them to recollect the matter, ſo as to report the ſame to the Houſe.

Ordered, That the Managers do draw up a report of the ſaid Free Conference, and make the ſame with what convenient ſpeed they can.

*Jovis, 23° die Junii.*

A MESSAGE from the Lords, by Sir Miles Cook and Mr. Meredith.

Mr. Speaker,

The Lords deſire a preſent Conference with this Houſe, in the Painted Chamber, upon the ſubject-matter of the laſt Free Conference.

And then the meſſengers withdrew.

Reſolved, That this Houſe doth agree to a Conference with the Lords, as the Lords do deſire.

And the meſſengers were called in again; and Mr. Speaker acquainted them therewith.

Ordered, That the Members who managed the Free Conference, do manage this Conference.

And they went to the Conference.

And being returned;

Sir Rowland Gwyn reported the Conference: and that the Earl of Rocheſter managed the ſame; who told them, That the Lords hoped, the Commons would take it as an inſtance of their ſincerity, to maintain a good correſpondence between the two Houſes; and that the Lords having, upon the report of the laſt Free Conference, been acquainted, that mention had been made, by one of the Members of the Houſe of Commons, that their Houſe had reſolved to proſecute the impeachments of John Goudet and others, by a Committee of the whole Houſe; though at the

the ſame time ſeveral other of the Members of that Houſe declared there was no authority given for the ſaying any ſuch thing at that Free Conference; however, it having been there ſaid, the Lords have deſired this preſent Conference, to know of the Commons, in what manner they deſign to proſecute the ſaid impeachments.

Reſolved, That this Houſe will be preſent at the trial of John Goudet and others, upon the impeachments againſt them, as a Committee of the whole Houſe.

Reſolved, That the ſaid reſolution be communicated to the Lords at a Conference.

Reſolved, That a Conference be deſired with the Lords, upon the ſubject-matter of the laſt Conference.

Ordered, That Sir Rowland Gwyn do go to the Lords and deſire the ſaid Conference.

*Sabbati, 2° die Julii.*

SIR Rowland Gwyn, according to order, reported the Free Conference with the Lords, the 21ſt of June laſt, relating to the impeachments of John Goudet and others, as followeth; viz.

That the Members of this Houſe, who were commanded to manage the Free Conference with the Lords, on Tueſday the 21ſt of June laſt, did meet their Lordſhips in the Painted Chamber.

And the Conference was begun by the Managers of this Houſe: who did acquaint the Lords, That the Commons had deſired this Free Conference, in order to maintain a good correſpondence with their Lordſhips; and could not doubt the ſincerity of their Lordſhips intentions towards that end:

That the good and welfare of this kingdom, in great meaſure, depend upon it; and that it is as much their Lordſhips intereſt, as the Commons, to continue it: and therefore, the Commons

might reaſonably hope, that their Lordſhips would wave all ſuch reſolutions as might occaſion, or tend to, any difference between the two Houſes:

That the matter now in queſtion does ariſe from a meſſage ſent, by the Commons, to their Lordſhips on the 6th of this inſtant, deſiring, that a convenient place might be appointed for the Managers of the impeachments againſt John Goudet and others, as is uſual; and their Lordſhips anſwers thereunto:

That the having ſuch a conveniency appointed, is abſolutely neceſſary for the Commons; whereby they may be the better enabled to make good their charge againſt them:

That the perſons impeached are eight in number; and the Commons have many witneſſes, books, and papers to produce, to make good their charge; which probably may continue the trials for ſome days:

That all trials are in open court; and that it will be impoſſible for the Commons to be defended from the crowd; or to produce their evidence, and make uſe of it in ſuch manner, and method, as would be neceſſary; or bear the fatigue of the trials; if they had not convenient accommodation provided for them:

That the Commons are a part of the legiſlature; and, if they muſt be ſet upon a level with the meaneſt of the people, it would be a diminution to their Lordſhips honour, who are another part of it, to treat them with diſreſpect:

That the legiſlature conſiſts of three parts, King, Lords, and Commons; and they are mutually concerned to ſupport each other's honour and dignity; and whatever ſlight or diſreſpect is ſhewed to any one of them, ought to be reſented by the other two:

That all courts of juſtice do provide convenient accommodation for the proſecutors, in all trials whatſoever; and the Lords, in the trial of the Lord Mohun, did appoint a convenient place for the King's Counſel: wherefore the Commons cannot believe, that

that their Lordſhips will have more regard to particular Gentlemen of the long robe, than a Committee of the Houſe of Commons:

That the Commons ought, of right, to have a convenient place appointed for their Managers, in all trials upon impeachments; and ſuch proviſion was made for them in the trials of the Earl of Strafford, and Lord Viſcount Stafford:

That the Lords did propoſe to the Commons, That a convenient place for their Managers ſhould be provided, in the Houſe their Lordſhips now ſit, upon the trial of the Earl of Strafford:

That the diſtinction made by their Lordſhips, at the laſt Conference, between trials for treaſon, and trials for miſdemeanors, cannot avail in the preſent caſe; for that the nature of the crime can only relate to the puniſhment due for the ſame; and does not alter, or change, the nature of the Court:

That the Houſe of Lords are, to all intents, the ſame Court in Weſtminſter Hall, as in any other room, or place; and have the ſame juriſdiction; the room where the Lords now ſit is not eſſentially neceſſary to the Conſtitution; the Lords were a Court before that room was built; and the ſame deference is paid to the Houſe of Lords in one place, as another; and, if there be reaſon for a conveniency in one place, the ſame reaſon holds for another: the Commons have ſhewed precedents; and though the precedents do not fully come up to the point in queſtion, yet they are precedents for any thing within the ſame reaſon:

That the Commons may, of right, appear at trials upon impeachments, as a Houſe, or by a Committee of the whole Houſe, as they think fit, and that, in regard this is a matter of great conſequence to the trade of this kingdom, they do intend to appear by a Committee of the whole Houſe upon this trial:

That the meſſage of the Commons, deſiring a convenient place might be appointed for the Managers, "as uſual," doth imply, That ſuch conveniency hath been often provided, as appears by

the precedents quoted; though, perhaps, not always: and therefore, the Commons conceive, That the precedent of the Lord Mordaunt, upon the Journals, is not ſufficient to bar them of that conveniency:

That all trials for miſdemeanors have not been at the Bar of the Houſe of Lords:

That the charge, and the ſubſtance of the evidence againſt Sir Giles Mompeſſon, and the other perſons concerned with him, was delivered by the Commons, at a Conference; and the Lords appointed Committees, to examine the witneſſes, to make good that charge; the examinations were reported to the Houſe, and copies ſent to the parties accuſed; and, upon their giving in their anſwers, the Lords proceeded to judgment; without any trial at the Bar:

That the like was done in the caſes of the Earl of Middleſex, who was Lord Treaſurer of England; and the Lord Viſcount St. Albans, who was Lord Chancellor:

That if miſdemeanors can be tried, only, at the Bar of the Houſe where their Lordſhips now ſit, and that Houſe ſhould happen to be burnt, or the Parliament ſhould be ſummoned to meet at any other place; then no perſon could be tried, upon any impeachment for miſdemeanor:

That 'tis not proper for the Commons to appoint the place where the trial ſhould be; but, wherever it is appointed, they judge it reaſonable and fitting, that thoſe Members of the Houſe of Commons, who have the management of that trial, and act not for their private profit, but the public good, ſhould have better accommodation than thoſe that appear for their fees:

That the matter of proof, in caſe of miſdemeanor, may be as long as in the caſe of treaſon; and the reaſons for conveniency and accommodation for the Managers, are as ſtrong in the one caſe, as the other:

That

That the methods of juſtice are not things of ceremony, but things of right; or they are not at all to be inſiſted upon:

That the Commons are not in their own power, as Counſel at the Bar, having a greater truſt upon them; and, there being eight perſons to be tried, it may be impoſſible for the ſtrength of nature to endure it, without an accommodation ſuitable to the occaſion:

That the Commons do not think it will be any diminution to the juriſdiction of the Houſe of Lords, to appoint a convenient place for the Commons to manage their evidence: the higher the Court is, there is more reaſon that trials, in that Court, ſhould be managed with the greateſt decency, and leaſt diſturbance:

That if there be no precedent, that this conveniency was ever aſked, there can be none that it ever was denied: it is a circumſtance of action, to be regulated by the variety of accidents; and it is time enough for the Commons to aſk a remedy for an inconvenience, as ſoon as they either apprehend or feel it:

That, for theſe reaſons, the Commons do inſiſt upon their having a convenient place appointed for the Managers of the impeachments againſt John Goudet, and others; whereby they may be the better enabled to make good their charge againſt them.

The Managers for the Lords, who ſpoke at this Conference, were, the Earls of Rocheſter and Peterborough, and the Lord Godolphin: and the ſubſtance of what was ſaid by the Managers for the Lords, was;

That the Lords meet the Commons with as great a deſire of maintaining a good correſpondence between both Houſes, as the Commons can have; and that they hope the Commons will not doubt of their ſincerity:

That the Commons cannot think, That the denying them a convenient accommodation, looks like a diſreſpect; becauſe they

are

are defended from it by the Conſtitution; and by their perſons, as well as their characters:

That the point in queſtion is grounded upon the firſt meſſage; which was, to deſire a convenient place for the Managers, "as was uſual;" and the Commons have inſiſted a great deal more upon the reaſonableneſs of the thing, and the conveniency of it, than its being uſual; and if a meſſage had been ſent, in the terms that the Commons ſeem to argue upon, poſſibly there would not have been that difference of opinion, as hitherto:

That the crimes the Commons have accuſed the perſons of, cannot be more odious to the Commons, than they are to the Lords; and the Lords are as ready to judge upon them, as the Commons are to proſecute:

That if there happens to be any difference, or impediment, it will ariſe from the Commons deſiring ſomething that is not uſual, and inſiſting upon it as uſual; and the hindrance of this proſecution will lie at their doors, that inſiſt upon a thing as uſual, when 'tis not proved to be ſo:

That this thing has not been uſual, in the manner the Commons have aſked it, does appear, by the ſeveral precedents in the caſes of the Attorney General, who was impeached by the Commons in the year 1641; Bynion, and Gourney Lord Mayor of London, who were impeached in 1642: and Archbiſhop Laud, impeached in 1643:

That there is no mention, in the Lords Journals, of any ſuch meſſage ſent, nor of any proviſion made for the Commons, upon theſe trials:

That ſeveral Lords and Commons do well remember, That divers Members of the Houſe of Commons came to the Bar of the Lords Houſe, to manage the evidence againſt the Lord Viſcount Mordaunt, who was impeached in the year 1666; and that no ſuch meſſage was ſent, nor any proviſion made for them:

That if any ſuch meſſage had been ſent by the Commons, upon theſe impeachments, or proviſion made for them, it were almoſt impoſſible but it would have been entered in the Lords Journals:

That the Lords own, that the crime being miſdemeanor, or treaſon, does not alter the caſe; the crime rather concerns the perſon that is accuſed, than the proſecutors, or judges:

That the meſſage ſent by the Commons, in the Earl of Straf-ford's caſe, was to deſire their Lordſhips would take care to find a conveniency for both Houſes; which does ſeem to imply, That the Commons did, from the beginning, think, that the trial would be in ſome other place than the Houſe of Lords:

That the Lords do not find, by their precedents, that it hath been uſual: if it had been aſked as a conveniency, at firſt, poſ-ſibly, it might have been otherwiſe than it is; and the Commons, intending to come as a Committee of the whole Houſe, may alter the caſe:

That the reaſonableneſs of what is deſired by the Commons, was never conſidered by the Lords; for they were bound up to conſider nothing but what was uſual:

That matters of form are eſſential to government; and 'tis of conſequence to be in the right:

That all the reaſon for forms, is cuſtom; and the law of forms, is practice; and reaſon is quite out of doors: ſome particular cuſtoms may not be grounded upon reaſon, and no good account can be given of them; and, yet, many nations are zealous for them; and Engliſhmen are as zealous as any others, to purſue their old forms and methods:

That when the Commons appoint a Committee, to manage in the caſe of miſdemeanor, there is but a ſmall number; which does not require the room that is neceſſary for a Committee of the whole Houſe; but, in matters of treaſon, every man is willing to hear, and the whole Houſe of Commons ought to hear, that they may the better know how to give their votes: ſo there is a mani-

feſt

feſt diſtinction between the whole Houſe, and a Committee, however conſiderable; the whole Houſe is more ſo than any part; and thoſe that are ſent, muſt be inferior to the whole body that ſends them:

That the words "as uſual," being in the Commons meſſage, the Lords could look upon nothing but what was uſual, though never ſo juſt and reaſonable in itſelf; and the Commons have not proved it uſual, by precedents exactly ſquaring to this caſe: the precedents produced by the Lords ſhew, That nothing in this kind was ever done in like caſes:

That if the Commons meſſage had been grounded upon the conveniency and reaſon of the thing, the Lords would have been compliant:

That the trial of the Lord Mordaunt, in 1666, proceeded ſo far, as to decide this point in queſtion:

That if the Commons come, in a Committee of the whole Houſe, there may be a door for an accommodation; which comes up to the precedent of the Earl of Strafford: for there ought to be another ſort of accommodation provided, when the whole Houſe comes, than for a Committee to manage the evidence:

That, ſuppoſing the Commons had reaſon on their ſide, this is a mixed caſe; and nothing ought to be imputed to the Houſe of Lords: that they endeavour to put it upon this foot, that the Houſe may have reaſon and cuſtom to proceed on, by taking notice of what was ſaid by the Commons, That they intend to come in a Committee of the whole Houſe:

That though the Lords ſhould allow the reaſon of the thing, yet reaſon is proper to be urged, only to prove a thing reaſonable: but when, from reaſon, you would urge it as a precedent, which you do not prove, but by reaſon, you may prove it a reaſonable thing, but you cannot prove it a precedented thing.

The

The Managers for the Commons, by way of reply, ſaid;

That if the Commons were allowed, of right, to have a conveniency provided for them in the caſes of the Earl of Strafford, and Viſcount Stafford, at their trials in Weſtminſter Hall;—though their Lordſhips call it Weſtminſter Hall, yet the Commons call it the Houſe of Lords; and their Lordſhips cannot call it otherwiſe; for their Lordſhips muſt act as ſuch, or they cannot paſs judgment;—the Houſe does not conſtitute the Lords, but the Lords the Houſe:—ſo that, it having been allowed in thoſe caſes, the Commons think they may demand it, "as uſual:"

That, if no precedent could be produced, it is ſo reaſonable, and neceſſary, that their Lordſhips cannot, in juſtice, deny the Commons having ſuch a conveniency: that neceſſity makes precedents; and that in this caſe, there are not only precedents, but neceſſity too:

That the word "uſual" ought to be underſtood as it is in all caſes, where a proſecutor is accommodated with ſuch conveniencies as may enable him to carry on the proſecution with effect:

That the precedents mentioned by their Lordſhips do not make for them; becauſe the Journals are ſilent as to what proviſion was made for the Commons, in thoſe caſes:

That if no particular proviſion was made for the Commons in the caſe of the Lord Mordaunt; yet, if that caſe had been attended with ſuch circumſtances as would have made that trial to have been as difficult to be carried on as this preſent proſecution, it is not to be doubted, but their Lordſhips would have made ſome proviſion for it:

That the Commons ſpeak very feelingly; for they are incommoded to that degree, in half an hour's time, at this Conference, that it is a very ſenſible argument of the neceſſity, that ſome conveniency ſhould be provided for them at the trials:

That the Commons have tried other methods, without ſucceſs:

and, if this proſecution drops, it is to be feared, there will be a total failure of juſtice in Parliament:

That if the Commons have departed from their firſt meſſage, by inſiſting upon the reaſonableneſs of having ſuch a conveniency provided for them, their Lordſhips ſeem to allow the reaſons to be good, by not giving any anſwer to them:

And, if the Commons have gone upon that point, inſtead of the uſage, it may give another underſtanding of the matter; for, if reaſon be on the Commons ſide, it is not be queſtioned, but it will have a good effect with the Lords:

That it would be a leſſening to the Lords, to ſuppoſe them greater in one place than another; they have the ſame honour wherever they are; and the Commons will pay all the reſpect that hath been paid to the Lords; and hope the Lords will afford the ſame conveniency to the Commons, that hath been heretofore provided upon impeachments:

That if the Commons ſhould allow, That they have not the ſame right to a conveniency in the Houſe of Lords, which they claim in Weſtminſter Hall, and a like diſpute ſhould happen upon an impeachment to be tried in Weſtminſter Hall, the Commons apprehend, that their Lordſhips might deny them ſuch conveniency, by affirming, That they are the ſame Lords in Weſtminſter Hall, as in the Houſe wherein they now ſit; and therefore ought not to be allowed any other conveniency in Weſtminſter Hall, than in the Houſe of Lords:

That all Courts provide convenient accommodations for the priſoner and proſecutor: it is a part of univerſal juſtice: and therefore it is to be preſumed, that the Lords, who are ſo high and honourable a Court, will not deny it:

That the Lords and Commons ſat together in the Court of Requeſts, then called Camera Alba, in the caſe of Gomenis and Weſton *.

* See this caſe in the note, to p. 68, of this Volume.

APPENDIX,

# APPENDIX, N° 12. (p. 263.)

*Extracts from the Commons Journals, reſpecting the Impeachment of Lord Orford, Lord Somers, &c.*

*Mercurii, 21° die Maii, 1701.*

A Meſſage from the Lords, by Sir Robert Legard and Mr. Gery:

Mr. Speaker,

They are commanded by the Lords to acquaint this Houſe, That their Lordſhips having been deſired, by the Earl of Orford, that a day may be appointed for his ſpeedy trial, their Lordſhips, finding no iſſue joined by replication of this Houſe, think fit to give notice thereof to this Houſe——Alſo,

They are commanded, by the Lords, to acquaint this Houſe, That they, having, on the firſt day of April laſt, ſent up to their Lordſhips an impeachment againſt William Earl of Portland, for high crimes and miſdemeanors; and having alſo, on the 15th day of the ſame month, impeached Charles Lord Hallifax for high crimes and miſdemeanors; and there being as yet no particular articles exhibited againſt the ſaid Lords; their Lordſhips think themſelves obliged to put this Houſe in mind thereof; which, after impeachments have ſo long depended, is a hardſhip to the perſons concerned, and not agreeable to the uſual methods and proceedings in Parliament in ſuch caſes.

And then the meſſengers withdrew.

Reſolved, That this Houſe will ſend an anſwer to the ſaid meſſages, relating to the ſaid impeachments, by meſſengers of their own.—And the meſſengers were called in and Mr. Speaker acquainted them therewith.

*Veneris*, 23° *die Maii.*

SIR Bartholomew Shower reported from the Committee appointed to draw up the articles of impeachment, That they had conſidered of the anſwer of Edward Earl of Orford, and had drawn up a replication thereunto; which they had directed him to report to the Houſe; which he read in his place; and afterwards delivered in at the Clerk's table: where the ſame was twice read; and, with an amendment, agreed unto by the Houſe; and is as followeth; viz.

The Commons have conſidered the anſwer of Edward Earl of Orford to the articles of impeachment exhibited againſt him by the Knights, Citizens, and Burgeſſes aſſembled in Parliament; and do aver their charge of high crimes and miſdemeanors againſt him to be true; and that the ſaid Earl is guilty in ſuch manner as he ſtands accuſed and impeached; and that the Commons will be ready to prove their charge againſt him, at ſuch convenient time as ſhall be appointed for that purpoſe.

Ordered, That the ſaid replication be ingroſſed.

Sir Bartholomew Shower alſo reported from the ſaid Committee, That they had directed him to move, That they may have power to ſend for perſons, papers, and records, that ſhall be thought neceſſary to be uſed at the trial of the ſaid Earl; and to proceed in the moſt ſpeedy and ſecret way they can, for the advantage of the proſecution.

Ordered, That the ſaid Committee have power to ſend for perſons, papers, and records, that ſhall be thought neceſſary to be uſed at the trial of the ſaid Earl; and to proceed in the moſt ſpeedy and ſecret way they can, for the advantage of the proſecution.

Ordered, That the ſaid Committee have power to ſend ſome of their number, to examine Mr. Samuel Shepherd in the Tower.

Ordered,

Ordered, That the ſaid Committee do conſider of the meſſages from the Lords, relating to the impeachments, and inſpect the Precedents of Meſſages in relation to former impeachments; and to report the ſame to the Houſe.

*Sabbati, 31° die Maii.*

MR. Bromley reported from the Committee, to whom it was referred to draw up the articles of impeachment, and who were to conſider of the meſſages from the Lords, relating to the former impeachments, and inſpect the Precedents of Meſſages in relation to former impeachments, and report the ſame to the Houſe, That they had conſidered the ſaid meſſages, and inſpected the precedents: and that they had drawn up an anſwer to the meſſage from the Lords, the twenty-firſt inſtant, and had directed him to report the ſame to the Houſe: which he read in his place; and afterwards delivered in at the Clerk's table; where the ſame was read; and is as followeth; viz.

In anſwer to your Lordſhips meſſage of the twenty-firſt inſtant, the Commons have prepared a replication to the Earl of Orford's anſwer to the articles of impeachment of high crimes and miſdemeanors, exhibited againſt him, and, at preſent, defer bringing it up to your Lordſhips, becauſe, in the trial of the ſeveral impeachments now depending, the Commons think it moſt proper, from the nature of the evidence that will be given at the ſaid trials, to begin with the trial of the impeachment of John Lord Somers, of high crimes and miſdemeanors.

And, as to your Lordſhips other meſſage, the Commons take it to be without precedent, and unparliamentary; they, as proſecutors, having a liberty to exhibit their articles of impeachment in due time, of which they, who are to prepare them, are the proper judges: and therefore, for your Lordſhips to aſſert, that having

having not yet exhibited particular articles againſt William Earl of Portland, and Charles Lord Hallifax, is a hardſhip to them, and not agreeable to the uſual methods and proceedings in Parliament in ſuch caſes, does, as they conceive, tend to the breach of that good correſpondence betwixt the two Houſes, which ought to be mutually preſerved.

Reſolved, That the Houſe doth agree, that the ſaid anſwer be returned to the Lords, to their Lordſhips ſaid meſſage.

Ordered, That Mr. Bromley do carry the ſaid anſwer to the Lords.

A Meſſage from the Lords, by Sir John Hoſkins and Sir Robert Legard:

That the Lords have commanded them to acquaint this Houſe, That their Lordſhips have appointed Monday, the ninth day of June next, for the trial of Edward Earl of Orford, upon the articles brought againſt him by this Houſe, in Weſtminſter Hall: and that this Houſe may reply, if they think fit.——Alſo,

That the Lords have commanded them to acquaint this Houſe, That this Houſe having, on the firſt day of April laſt, ſent up to their Lordſhips an impeachment againſt William Earl of Portland, for high crimes and miſdemeanors; and having alſo, on the fifteenth day of the ſame month, impeached Charles Lord Hallifax for high crimes and miſdemeanors; and there being, as yet, no particular articles exhibited againſt the ſaid Lords; their Lordſhips think themſelves obliged to put this Houſe in mind thereof; which, after impeachments have ſo long depended, is a hardſhip to the perſons concerned, and not agreeable to the uſual methods of Parliament in ſuch caſes.

And then the meſſengers withdrew.

Reſolved, That an anſwer be returned to the ſaid meſſage, relating to the appointing a time for the trial of the Earl of Orford;

and to the articles of impeachment againſt the Earl of Portland, and Lord Halliſax; That this Houſe will return an anſwer by meſſengers of their own.

And the meſſengers were called in again; and Mr. Speaker acquainted them therewith.

Reſolved, That a Committee be appointed to conſider of the ſaid meſſages; and to ſearch precedents in relation thereunto; and to draw up an anſwer to be returned to the Lords.

And it is referred to the Lord Marquis of Hartington, Sir Chriſtopher Muſgrave &c. &c. &c.; and they are to meet at five o'clock this afternoon, in the Speaker's Chamber: and are to ſit *de die in diem*.

*Mercurii, 4° die Junii.*

A MESSAGE from the Lords, by Sir Richard Holford and Mr. Pitt:

Mr. Speaker,

The Lords do think fit, upon occaſion of the meſſage from this Houſe, of the one-and-thirtieth of May, to acquaint this Houſe, That having been deſired by the Lord Somers, that a day may be appointed for his ſpeedy trial; and their Lordſhips, finding no iſſue joined by replication of the Houſe of Commons, judge it proper to give them notice thereof, that the Commons may reply, if they think fit: and at the ſame time their Lordſhips let the Commons know, that they will proceed to the trial of any of the impeached Lords, whom the Commons ſhould be firſt ready to begin with, ſo as there may be no occaſion taken from thence for any unreaſonable delay in the proſecution of any of them: and further to acquaint them, that, having ſearched their own journals, they do not find, that, after a general impeachment, there has ever been ſo long a delay of bringing up the particular articles

articles of impeachment, ſitting the Parliament; and therefore the Lords do think they had reaſon to aſſert, that it was a hardſhip to the two Lords concerned, eſpecially after their Lordſhips had put the Houſe of Commons in mind of exhibiting ſuch articles) and not agreeable to the uſual proceedings in Parliament: and, as the Lords do not controvert what right the Commons may have of impeaching, in general terms, if they pleaſe; ſo the Lords, in whom the judicature does intirely reſide, think themſelves obliged to aſſert, that the right of limiting a convenient time for bringing the particular charge before them, for the avoiding delay in juſtice, is lodged in them.

The Lords hope the Commons, on their part, will be as careful not to do any thing that may tend to the interruption of the good correſpondence between the two Houſes, as the Lords ſhall ever be on their part: and the beſt way to preſerve that, is, for neither of the two Houſes to exceed thoſe limits, which the law and cuſtom of Parliament have already eſtabliſhed.

Mr. Harcourt, according to order, reported from the Committee, who were appointed to conſider of the meſſage from the Lords, of Saturday laſt, and ſearch precedents in relation thereunto, and prepare an anſwer to the ſaid meſſage, That they had conſidered the ſaid meſſage, and ſearched precedents, and had drawn up an anſwer accordingly; which they had directed him to report to the Houſe; which he read in his place; and afterwards delivered in at the Clerk's table: where the ſame was once read; and then a ſecond time, paragraph by paragraph; and, with ſome amendments, agreed unto by the Houſe; and is as followeth; viz.

The Commons, on conſideration of your Lordſhips meſſage to them, of the 31ſt of May, concerning the Earl of Orford, think it their undoubted right, when ſeveral perſons ſtand impeached before

before your Lordſhips, to bring to trial ſuch of them, in the firſt place, as the Commons apprehend, from the nature of the evidence, ought to be firſt proceeded againſt; to the intent all ſuch offenders may, in due time, be brought to juſtice; and that no day ought to be appointed by your Lordſhips, for the trial of any impeachment by the Commons, without ſome previous ſignification to your Lordſhips from the Commons, of their being ready to proceed thereon.

The Commons could not receive this meſſage from your Lordſhips, without the greateſt ſurprize; your Lordſhips proceedings, in this caſe, being neither warranted by precedents, nor, as the Commons conceive, conſiſtent with the methods of juſtice or with reaſon: wherefore the Commons cannot agreed to the day appointed by your Lordſhips for the trial of the Earl of Orford.

As to your Lordſhips meſſage at the ſame time, relating to the Earl of Portland, and Charles Lord Hallifax, the Commons take the ſame to be without precedent, and unparliamentary; and conceive your Lordſhips frequent repetition thereof, in ſo ſhort a time after the Commons had tranſmitted to your Lordſhips their articles againſt two of the impeached Lords, and were daily preparing their articles againſt the others, manifeſtly tends to the delay of juſtice, in obſtructing the trials of the impeached Lords, by introducing diſputes, in breach of that good correſpondence between the two Houſes, which ought inviolably to be preſerved.

Ordered, That Mr. Harcourt do carry the ſaid anſwer to the Lords.

*Jovis*, 5° *die Junii*.

THE Houſe, according to order, proceeded to take into conſideration the meſſage yeſterday from the Lords, relating to the impeachments:

And the ſame being read;

Reſolved, That a Conference be deſired with the Lords, upon the ſubject-matter of the ſaid meſſage.

Ordered, That the ſaid meſſage be referred to the Committee appointed to draw up the articles of impeachments: and that they do draw up what is to be offered to the Lords at the ſaid Conference.

*Veneris*, 6° *die Junii*.

MR. Harcourt reported from the Committee appointed to draw up articles of impeachment; and who were to conſider of the meſſage from the Lords of the fourth of June inſtant; and to draw up what ſhall be offered at a Conference with the Lords, upon the ſubject-matter of the ſaid meſſage; That they had drawn up the ſame accordingly; and had directed him to report the ſame to the Houſe; which he read in his place; and afterwards delivered in at the Clerk's table: where the ſame was read twice; and, upon the queſtion put thereupon, agreed unto by the Houſe; and is as followeth; viz.

The Commons have deſired this Conference, upon your Lordſhips meſſage of the fourth of June, in order to preſerve a good correſpondence with your Lordſhips, which will always be the endeavour of the Commons, and is at this time particularly neceſſary, in order to bring the impeached Lords to a ſpeedy trial. And becauſe the meſſages, which your Lordſhips have thought fit

fit to ſend to the Commons, and the anſwers thereunto, ſeem not to tend towards expediting the trials, which the Commons ſo much deſire, but may rather furniſh matter of diſpute between the two Houſes; the Commons therefore chooſe to follow the methods formerly uſed, with good ſucceſs, upon the like occaſion: and, for the more ſpeedy and eaſy adjuſting and preventing any differences, which have already happened, or may ariſe, previous to, or upon, theſe trials, the Commons do propoſe to your Lordſhips, That a Committee of both Houſes be nominated, to conſider of the moſt proper ways and methods of proceeding on impeachments, according to the uſage of Parliament.

Ordered, That Mr. St. John do go to the Lords, and deſire the ſaid Conference.

Mr. St. John reported, That he having, according to order, been at the Lords, to deſire a Conference, the Lords do agree to a Conference accordingly; and appoint the ſame preſently, in the Painted Chamber.

Ordered, That the Committee, who were appointed to draw up articles of impeachment, do manage the Conference.

And the Managers went to the Conference.

And being returned;

Mr. Harcourt reported, That they had been at the Conference; and delivered to the Lords what the Houſe had directed: and that the impeached Lords were not at the Conference.

*Lunæ*, 9° *die Junii.*

A MESSAGE from the Lords, by Sir Richard Holford and Mr. Gery:

Mr. Speaker,

We are commanded by the Lords, to acquaint this Houſe,

That, in anſwer to the meſſage of the Houſe of Commons, of the fourth inſtant, the Lords ſay, by their meſſage ſent on the third, (wherein they declare themſelves ready to proceed to the trial of any of the impeached Lords, whom the Commons ſhould be firſt ready to begin with) they have given a full proof of their willingneſs to comply with the Commons, in any thing which may appear reaſonable, in order to the ſpeedy determining of the impeachments now depending: and therefore, as the Lords conceive the Commons had no occaſion to begin any diſpute on that head, ſo their Lordſhips are careful to decline entering into a controverſy, which ſeems to them to be of no uſe at preſent.

The Lords think themſelves obliged to aſſert their undoubted right to appoint a day for the trial of any impeachment depending before them, if they ſee good cauſe for it, without any previous ſignification from the Commons of their being ready to proceed; which right is warranted by many precedents, as well as conſonant to juſtice and reaſon; and their Lordſhips, according to the example of their anceſtors, will always uſe that right with a regard to the equal and impartial adminiſtration of juſtice, and with a due care to prevent unreaſonable delays.

This being the caſe, the Lords cannot but wonder, that the Commons, without any foundation for it, ſhould make uſe of expreſſions, which, as their Lordſhips conceive, have never been uſed before by one Houſe of Parliament to another; and which, if the like were returned, muſt neceſſarily deſtroy all good correſpondence between the two Houſes.

The laſt part of the Commons meſſage being, in effect, a repetition only of their former, of the one-and-thirtieth of May, to which the Lords have already returned a full anſwer, their Lordſhips think it not requiſite to ſay more, than that they cannot apprehend with what colour their calling upon the Houſe of Commons to ſend up articles againſt two Lords, whom the Commons have ſo long ſince impeached in general terms, can be ſaid to

tend to the delay of juſtice: and therefore, as the Lords think the Commons ought to have forborn that reflection, ſo their Lordſhips, in ſaying no more upon the occaſion of this meſſage of the Commons, think they have given a convincing proof of their moderation, and of their ſincere deſire of preſerving a good correſpondence between the two Houſes; which is ſo neceſſary for the public ſecurity, as well as doing right upon the impeachments.

And then the meſſengers withdrew.

Ordered, That the ſaid meſſage, relating to the impeachments, be referred to the Committee, who were appointed to draw up articles of impeachment, and ſearch precedents, to draw up an anſwer thereunto.

A meſſage from the Lords, by Sir Richard Holford and Mr. Gery:

Mr. Speaker,

We are commanded by the Lords to acquaint this Houſe, That the Lords have appointed the trial of John Lord Somers on Friday next, on the impeachment againſt him by this Houſe.

And then the meſſengers withdrew.

Ordered, That the ſaid meſſage be taken into conſideration tomorrow morning.

*Martis, 10° die Junii.*

MR. Harcourt reported from the Committee, to whom it was referred to draw up articles of impeachment, That they had, according to order, drawn up an anſwer to the meſſage from the Lords yeſterday, which they had directed him to report to the Houſe; which he read in his place; and afterwards delivered in at the Clerk's table: where the ſame was twice read; and, with

an

an amendment, agreed unto by the Houſe; and is as followeth; viz.

The Commons, in hopes of avoiding all interruptions and delays in proceeding againſt the impeached Lords, and the many inconveniencies which might ariſe thereby, having propoſed to your Lordſhips, at a Conference, That a Committee of both Houſes might be nominated, to conſider of the moſt proper ways and methods of proceeding on impeachments, think they might juſtly have expected your Lordſhips compliance with their ſaid propoſition, inſtead of your Lordſhips anſwer to their meſſage of the fourth inſtant, which they yeſterday received: in which anſwer of your Lordſhips, though many matters of great exception are contained, a ſuitable reply whereunto would inevitably deſtroy all good correſpondence between the two Houſes, yet the Commons, from an earneſt deſire to preſerve the ſame, as well as to give the moſt convincing proof of their moderation, and to ſhew their readineſs to bring the impeached Lords to ſpeedy juſtice, at preſent inſiſt only on their propoſition for a Committee of both Houſes, to ſettle and adjuſt the neceſſary preliminaries to the trials; particularly, whether the impeached Lords ſhall appear, on their trials, at your Lordſhips Bar, as criminals; whether, being under accuſations of the ſame crimes, they are to ſit as Judges on each other's trials, for thoſe crimes; or can vote in their own caſes: as we find by your Lordſhips Journals, ſince their being impeached, they have been admitted to do: which matters, and ſome others, being neceſſary to be adjuſted, the Commons cannot but inſiſt on a Committee of both Houſes to be appointed for that purpoſe; their departing from which would be giving up the rights of the Commons of England, known by unqueſtionable precedents, and the uſage of Parliament; and making all impeachments, the greateſt bulwark of the laws and liberties of England, impracticable for the future.

Ordered, That Mr. Harcourt do carry the ſaid anſwer to the Lords.

The Houſe, according to order, proceeded to take into conſideration the meſſage from the Lords yeſterday; whereby they acquainted this Houſe, That they have appointed the trial of John Lord Somers on Friday next, on the impeachment againſt him.

And the ſame was read.

Ordered, That the ſaid meſſage be referred to the Committee appointed to draw up articles of impeachment, to prepare an anſwer to the ſaid meſſage.

A meſſage from the Lords, by Sir Richard Holford and Mr. Gery:

Mr. Speaker,

The Lords do deſire a preſent Conference with this Houſe, in the Painted Chamber, upon the ſubject-matter of the laſt Conference.

And then the meſſengers withdrew.

Reſolved, That the Houſe doth agree to a preſent Conference with the Lords, as their Lordſhips do deſire.

And the meſſengers were called in again; and Mr. Speaker acquainted them therewith.

Ordered, That the Committee that managed the laſt Conference, do manage this Conference.

And the Managers went to the Conference.

And, being returned;

Mr. Harcourt reported, That he had, according to order, carried the ſaid anſwer to the Lords.

Mr. Harcourt alſo reported the Conference: and that it was managed by the Duke of Devonſhire; who acquainted them, That the Lords have deſired this Conference, upon occaſion of the laſt

Conference,

Conference, in order to preſerve a good correſpondence with the Houſe of Commons; which they ſhall always endeavour.

As to the late meſſages between the two Houſes, their Lordſhips are well aſſured, that, on their part, nothing has paſſed, but what was agreeable to the methods of Parliament, and proper to preſerve that good underſtanding between both Houſes, which is neceſſary for the carrying on of the public buſineſs.

As to the propoſal of the Commons, That a Committee of both Houſes ſhould be appointed, to conſider of ways and methods of proceedings on impeachments; their Lordſhips cannot agree to it.

1ſt, Becauſe they do not find, that ever ſuch a Committee was appointed on occaſion of impeachments for miſdemeanors: and their Lordſhips think themſelves obliged to be extremely cautious in admitting any thing new in matters relating to judicature.

2dly, That although a Committee of this nature was agreed to upon the impeachments of the Earl of Danby, and the five Popiſh Lords, for high treaſon; yet it was upon occaſion of ſeveral conſiderable queſtions and difficulties, which did then ariſe: and their Lordſhips do not find, that the ſucceſs in that inſtance was ſuch as ſhould encourage the purſuing the ſame methods again, though in the like caſe; the Lords obſerving, that, after much time ſpent at that Committee, the diſputes were ſo far from being there adjuſted, that they occaſioned the abrupt concluſion of a ſeſſion of Parliament.

3dly, Their Lordſhips are of opinion, that the methods of proceedings on impeachments for miſdemeanors are ſo well ſettled by the uſage of Parliaments, that they do not foreſee any difficulties likely to happen; at leaſt, none have been yet ſtated to them; and all the preliminaries, in the caſe of Stephen Goudett, and others, which was the laſt inſtance of impeachments for miſdemeanors,

miſdemeanors, were eaſily ſettled and agreed to, without any ſuch ſuch Committee.

4thly, The Lords cannot but obſerve, That this propoſal of the Commons comes ſo very late, that their Lordſhips can expect no other fruit of ſuch a Committee, but the preventing of the trials during this ſeſſion.

The Lords aſſure the Commons, that, in caſe any difficulties ſhall ariſe in the progreſs of theſe trials, which their Lordſhips do not foreſee, they will be ready to comply with the Commons in removing them, as far as juſtice, and the uſage of Parliament, will admit.

Ordered, That the ſaid report be taken into conſideration to-morrow morning.

*Mercurii*, 11° *die Junii*.

MR. Harcourt reported, from the Committee appointed to draw up articles of impeachment, That they had, according to order, drawn up an anſwer to the meſſage from the Lords, on Monday laſt, for appointing the trial of the Lord Somers upon Friday next; which they had directed him to report to the Houſe; which he read in his place; and afterwards delivered in at the Clerk's table: where the ſame was twice read; and, upon the queſtion put thereupon, agreed unto by the Houſe; and is as followeth; viz.

The Commons, on Monday laſt, received a meſſage from your Lordſhips, That your Lordſhips had appointed the trial of John Lord Somers upon Friday next, on their impeachment againſt him; in which they obſerve, your Lordſhips have not nominated any place for his trial, though your Lordſhips thought fit to make that matter, on the laſt impeachments for miſdemeanors, the ſubject of a long debate.

And they cannot but take notice, that your Lordſhips have

taken as long a time to give your anſwer to the Commons deſire of a Committee of both Houſes, delivered at a Conference on Friday laſt, as you are pleaſed to allow the Commons to have of the day appointed by your Lordſhips for the ſaid trial.

Your Lordſhips appointing ſo ſhort a day, eſpecially whilſt the propoſition made to your Lordſhips, for a Committee of both Houſes, was undetermined, the Commons take to be ſuch a hardſhip to them, and ſuch an indulgence to the perſon accuſed, as is not to be paralleled in any parliamentary proceeding.

The Commons muſt likewiſe acquaint your Lordſhips, That their experience of the interruption of a former trial, on an impeachment for miſdemeanors, for want of ſettling the preliminaries between the two Houſes, obliges them to inſiſt on a Committee of both Houſes, for preventing the like interruption.

And they conceive it would be very prepoſterous for them to enter upon the trial of any of thoſe Lords, till your Lordſhips diſcover ſome inclination to make the proceeding thereupon practicable: and therefore they think they have reaſon to inſiſt upon another day to be appointed for the trial of the Lord Somers: and the Committee doubts not but to ſatisfy your Lordſhips, at a Free Conference, of the neceſſity of having a Committee of both Houſes, before they can proceed upon the ſaid trial.

Ordered, That Mr. Harcourt do carry the ſaid anſwer to the Lords.

Ordered, That Colonel Granville do go to the Lords, and deſire the Free Conference.

Mr. Harcourt reported, That he had, according to order, delivered the anſwer to the Lords meſſage.

*Jovis*,

*Jovis, 12° die Junii.*

COLONEL Granville reported, That he having, according to order, been at the Lords, to deſire a Free Conference with their Lordſhips, upon the ſubject-matter of the laſt Conference; the Lords anſwered, That they will ſend an anſwer by meſſengers of their own.

A meſſage from the Lords, by Doctor Newton and Mr. Gery:

Mr. Speaker,

We are commanded by the Lords to acquaint this Houſe, That, in anſwer to the meſſage from the Houſe of Commons, of the 10th inſtant, the Lords ſay, That, although they take it to be unparliamentary in many particulars, yet, to ſhew their real deſire of avoiding diſputes, and removing all pretence of delaying the trials of the impeached Lords, they will only take notice of that part of their meſſage, wherein the Commons propoſe ſome things as difficulties, in reſpect of the trials; which matters relating wholly to their judicature, and to their rights and privileges as Peers, they think fit to acquaint the Commons with the following reſolutions of the Houſe of Lords:

1ſt. That no Lord of Parliament, impeached of high crimes and miſdemeanors, and coming to his trial, ſhall, upon his trial, be without the Bar.

2dly. That no Lord of Parliament, impeached of high crimes and miſdemeanors, can be precluded from voting on any occaſion, except in his own trial.

Their Lordſhips further take notice of a miſtake, in point of fact, alleged in the meſſage of the Commons; it no way appearpearing, upon their Journals, that the Lords impeached have voted in their own caſe.

The Lords being well aſſured, that all the ſteps that have been taken by them, in relation to theſe impeachments, are warranted

by the practice of their anceſtors, and the uſage of Parliament, have reaſon to expect the trials ſhould proceed without delay. —Alſo,

We are commanded by the Lords to acquaint this Houſe, That,

In anſwer to the meſſage of the Houſe of Commons yeſterday, the Lords ſay, That they cannot give a greater evidence of their ſincere and hearty deſires of avoiding all differences with the Houſe of Commons, and of proceeding on the trials of the impeachments, than by not taking notice of the ſeveral juſt exceptions to which that meſſage is liable, both as to the matter and expreſſions.

The Lords have nothing further from their thoughts, than the going about to do any thing which might have the leaſt appearance of hardſhip, with relation to the Commons:

But the anſwer of the Lord Somers to the articles exhibited againſt him, having been ſent down to the Commons on the four-and-twentieth of May laſt; and they having, by their meſſage of the one-and-thirtieth of May, ſignified to their Lordſhips their intention of beginning with the trial of his impeachment in the firſt place;

The Lords, conſidering how far the ſeſſion is advanced, thought it reaſonable to appoint the 13th inſtant for the ſaid trial; their Lordſhips finding ſeveral precedents of appointing trials in impeachments within a ſhorter time.

The Lords alſo think it incumbent upon them to endeavour to diſpatch the trials of all the impeached Lords before the riſing of the Parliament: this is what juſtice requires, and cannot be looked upon as a matter of indulgence: nevertheleſs, that the Commons may ſee how deſirous their Lordſhips are to comply with them in any thing which may be conſiſtent with juſtice, they have appointed the trial of impeachment againſt John Lord Somers, on Tueſday, the 17th of this inſtant June, at ten of the clock

clock in the forenoon, in the Houſe of Lords, which will be then ſitting in Weſtminſter Hall.—Alſo,

We are commanded by the Lords to acquaint this Houſe, That the Lords do agree to a Free Conference with the Commons, as deſired, and do appoint to-morrow, at one o'clock, in the Painted Chamber.

And then the Meſſengers withdrew.

Ordered, That the ſaid two firſt meſſages be referred to the Committee, who were appointed to draw up the articles of impeachment.

*Veneris, 13° die Junii.*

MR. St. John reported from the Committee, to whom it was referred to draw up the articles of impeachment, and to whom the meſſages from the Lords yeſterday were referred, That they had drawn up an anſwer to the ſaid meſſages; which they had directed him to report to the Houſe; which he read in his place; and afterwards delivered in at the Clerk's table: where the ſame was twice read; and, upon the queſtion put thereupon, agreed unto by the Houſe; and is as followeth; viz.

The Houſe of Commons find greater reaſon to inſiſt upon their propoſal of a Committee of both Houſes, from the two meſſages received yeſterday from your Lordſhips; for their ambiguity and uncertainty do ſhew the method of former Parliaments to be the moſt proper way for diſpatch of buſineſs.

The Commons have been obliged to employ that time in conſidering and anſwering your Lordſhips meſſages, which otherwiſe would have been ſpent in preparing for the Lord Somers's trial; ſo that the delay muſt be charged where the occaſion ariſeth: and the Commons, having deſired a Committee of both Houſes to adjuſt the preliminaries of the trials, cannot but think it ſtrange your Lordſhips ſhould come to reſolutions upon two of thoſe

points, while the propoſal of the Houſe of Commons is under debate at Conferences between the two Houſes; the Commons having other difficulties to propoſe, which concern them as proſecutors, and all future impeachments.

And, though the Commons leave the ſubject of your Lordſhips reſolutions, with other things, to be debated at a Committee of both Houſes; yet they cannot but obſerve, that your Lordſhips ſecond reſolution is no direct anſwer to the Commons propoſal; which was, Whether Peers, impeached of the ſame crimes, ſhall vote for each other upon their trial for the ſame crimes? And the Commons cannot believe, that any ſuch rule can be laid down, in plain words, where there is a due regard to juſtice.

And as to what your Lordſhips obſerve, That there is a miſtake in point of fact, alleged by the Commons; this Houſe may take off the caution uſed by your Lordſhips in wording that part of your meſſage; for they know, your Lordſhips are too well acquainted with the truth of the fact to affirm, That the impeached Lords did not vote in their own caſes: and, though the appearing or not appearing upon your Lordſhips' Journal, does not make it more or leſs agreeable to the rules of juſtice; yet the Commons cannot but add this further obſervation, from your Lordſhips' Journal, That the impeached Lords preſence is not only recorded when thoſe votes paſſed, but they alſo find ſome of them appointed of Committees for preparing and drawing up the meſſages and anſwers to the Houſe of Commons: which they do not think has been the beſt expedient for preſerving a good correſpondence between the two Houſes, or adjuſting what will be neceſſary upon theſe trials: and therefore the Commons cannot think it agreeable to the rules of Parliament, for them to appear at a trial, till all neceſſary preliminaries are firſt ſettled with your Lordſhips.

Ordered, That the ſaid anſwer be ſent to the Lords.

Ordered,

Ordered, That Mr. St. John do carry the ſaid anſwer to the Lords.

Ordered, That the Committee who managed the laſt Conference, do manage the Free Conference.

And the Managers went to the Conference.

And being returned;

Mr. Harcourt reported what had happened at the Conference, in a ſpeech of the Lord Haverſham; upon which the Managers thought fit to withdraw from the Conference, to the end they might acquaint the Houſe therewith.

Ordered, That the Managers do withdraw into the Speaker's Chamber, and collect the matter of the Conference; and what was ſaid by the Lord Haverſham; and report the ſame to the Houſe.

And the Managers withdrew.

And the Houſe adjourned till the return of the Managers.

The Managers being returned;

Mr. Harcourt reported the matter of the Free Conference; and the words which the Lord Haverſham had ſpoke thereat; which he read in his place; and afterwards delivered in at the Clerk's table: where the ſame was read; and is as followeth; viz.

That the Managers, appointed by this Houſe, met the Lords at a Free Conference; the ſubject-matter whereof was opened by Mr. Harcourt, and immediately afterwards, further argued by Sir Bartholomew Shower.

It was inſiſted on by each of them, That the reaſons offered by their Lordſhips at the laſt Conference, were not ſufficient for their Lordſhips diſagreeing to a Committee of both Houſes, deſired by the Commons at the firſt Conference:

That, notwithſtanding thoſe reaſons, the Commons ſtill thought a Committee of both Houſes abſolutely neceſſary for adjuſting

and

and preventing ſuch differences as had happened, or might ariſe, previous to, or upon, the trials: and therefore inſiſted, That ſuch a Committee ſhould be appointed, before the Commons could proceed on any trial.

It was urged, as one reaſon for ſuch a Committee, That many difficulties might happen, whereby the trials might be obſtructed, if the preliminaries ſhould not be firſt adjuſted: as one inſtance, that point, of ſeveral Lords, being under impeachments of the ſame crimes, voting on each other's trials, was mentioned.

The Lord Steward firſt replied; and nothing was offered by his Grace, but what was material and pertinent to the matter in queſtion, and agreeable to the method of Parliament in Free Conferences.

That John Lord Haverſham ſpoke immediately after; and, in his Lordſhip's diſcourſe, uſed theſe, or the like expreſſions:

" One thing there is, though I cannot ſpeak to it, becauſe I am " bound up by the orders of the Houſe; yet it muſt have ſome " anſwer; that is, As to the Lords voting in their own caſe; it re- " quires an anſwer; though I cannot go into the debate of it: " the Commons themſelves have made this precedent; for, in " theſe impeachments, they have allowed men, guilty of the ſame " crimes, to vote in their own Houſe: and therefore we have not " made any diſtinction in our Houſe, that ſome ſhould vote, and " ſome not. The Lords have ſo high an opinion of the juſtice " of the Houſe of Commons, that, they hope, juſtice ſhall never " be made uſe of as a maſk for any deſign: and therefore give " me leave to ſay, though I am not to argue it, it is a plain de- " monſtration, that the Commons think theſe Lords innocent: " and, I think, the propoſition is undeniable; for there are " ſeveral Lords in the ſame crimes. In the ſame facts, there " is no diſtinction: and the Commons leave ſome of theſe " men at the head of affairs, near the King's perſon, to do

" any

" any miſchief, if their perſons were inclined to it; and impeach " others, when they are both alike guilty, and concerned in the " ſame facts: This was a thing I was in hopes I ſhould never " have heard aſſerted, when the beginning of it was from the " Houſe of Commons."

Theſe expreſſions were inſtantly objected to by Sir Chriſtopher Muſgrave; and the Managers took them to be ſo great an aſperſion on the honour of this Houſe, that they thought themſelves obliged, in duty, immediately to withdraw from the Free Conference.

As the Managers were withdrawing, his Grace my Lord Steward ſpoke to the effect following:

That, he hoped, we would not think that Lord had any authority from the Houſe of Lords to uſe any ſuch expreſſions towards the Commons.

Reſolved, That John Lord Haverſham hath, at the Free Conference this day, uttered moſt ſcandalous reproaches, and falſe expreſſions, highly reflecting upon the honour and juſtice of the Houſe of Commons, and tending to the making a breach in the good correſpondence between the Lords and Commons, and to the interrupting the public juſtice of the nation, by delaying the proceedings on the impeachments.

Reſolved, That John Lord Haverſham be charged, before the Lords, for the words ſpoken by the ſaid Lord this day, at the Free Conference; and that the Lords be deſired to proceed in juſtice againſt the ſaid Lord Haverſham; and to inflict ſuch puniſhment upon the ſaid Lord, as ſo high an offence againſt the Houſe of Commons does deſerve.

Ordered, That Sir Chriſtopher Muſgrave do carry the ſaid charge and reſolution to the Lords.

A meſſage from the Lords, by Dr. Newton and Mr. Gery:

Mr. Speaker,

The Lords having been informed by their Managers, That ſome interruption happened at the Free Conference; which their Lordſhips are concerned at, becauſe they wiſh that nothing ſhould interrupt the public buſineſs; do deſire the Commons would come again preſently to the ſaid Free Conference; which, they do not doubt, will prove the beſt expedient to prevent the inconvenience of a miſunderſtanding upon what has paſſed.

And then the meſſengers withdrew.

Reſolved, That this Houſe will ſend an anſwer by meſſengers of their own.

And the meſſengers were called in again; and Mr. Speaker acquainted them therewith.

Sir Chriſtopher Muſgrave reported, That he had been at the Lords; and, according to order, delivered the charge and reſolution of the Houſe, relating to Lord Haverſham.

*Sabbati, 14° die Junii.*

A MESSAGE from the Lords, by Sir John Hoſkins and Dr. Newton:

Mr. Speaker,

The Lords have commanded us to acquaint this Houſe, That, upon the occaſion of their laſt meſſage yeſterday, in order to continue a good correſpondence between the two Houſes, their Lordſhips did immediately appoint a Committee to ſtate the matter of the Free Conference, and alſo to inſpect precedents of what has happened of the like nature: and, that the public buſineſs may receive no interruption, the time deſired by their Lordſhips for renewing the Free Conference being elapſed, their Lordſhips deſire a preſent Free Conference, in the Painted Chamber, upon the ſubject-matter of the laſt Free Conference.

And

And then the meſſengers withdrew.

Reſolved, That this Houſe will ſend an anſwer by meſſengers of their own.

And the meſſengers were called in again; and Mr. Speaker acquainted them therewith.

Reſolved, That an anſwer be returned to the Lords, That the Commons are extremely deſirous to preſerve a good correſpondence between the two Houſes, and to expedite the trials of the impeached Lords; but do conceive, it is not conſiſtent with the honour of the Commons to renew the Free Conference, until they have received reparation, by their Lordſhips doing juſtice upon John Lord Haverſham, for the indignity he yeſterday offered to the Houſe of Commons.

Ordered, That the * Lord Cheyne do carry the ſaid anſwer to the Lords.

*Martis, 17° die Junii.*

MR. Harcourt reported from the Committee appointed to draw up articles of impeachment, and to whom the meſſages from the Lords yeſterday were referred, and to draw up reaſons why they cannot proceed to the trial of the Lord Somers this day; That they had drawn up reaſons; which they had directed him to report to the Houſe accordingly; which he read in his place; and afterwards delivered in at the Clerk's table: where the ſame were twice read; and agreed unto by the Houſe; and are as follows; viz.

The Commons, in this whole proceeding againſt the impeached Lords, have acted with all imaginable zeal to bring them to a ſpeedy trial; and they doubt not but it will appear, by comparing

* This Lord Cheyne was a Peer of Scotland, created in 1681; of a conſiderable eſtate in Buckinghamſhire, and whoſe family were elected for that county, and for Agmondeſham, in ſeveral Parliaments between 1660, and the Union of the two kingdoms.

their proceedings with all others upon the like occaſion, that the Houſe of Commons have nothing to blame themſelves for, but that they have not expreſſed the reſentment their anceſtors have juſtly ſhewed upon much leſs attempts, which have been made upon their power of impeachments.

The Commons, on the thirty-firſt of May, acquainted your Lordſhips, That they thought it proper, from the nature of the evidence, to proceed, in the firſt place, upon the trial of the Lord Somers; upon the firſt intimation from your Lordſhips, ſome days afterwards, that you would proceed to the trial of any of the impeached Lords, whom the Commons ſhould be firſt ready to begin with; notwithſtanding your Lordſhips had before thought fit to appoint which impeachment ſhould be firſt tried, and affix a day for ſuch trial, without conſulting the Commons, who are the proſecutors.

The Commons, determining to expedite the trials to the utmoſt of their power, in hopes of attaining that end, and for the more ſpeedy and eaſy adjuſting and preventing differences, which had happened, or might ariſe, previous to, or upon theſe trials, propoſed to your Lordſhips, at a Conference, the moſt parliamentary and effectual method for that purpoſe, and that which in no manner intrenched upon your Lordſhips judicature, That a Committee of both Houſes ſhould be nominated, to conſider of the moſt proper ways and methods of proceedings upon impeachments, according to the uſage of Parliament.

In the next meſſage to the Commons, upon Monday the ninth of June, your Lordſhips thought fit, without taking the leaſt notice of this propoſition, to appoint the Friday then following for the trial of the ſaid Lord Somers: whereunto, as well as to many other meſſages and proceedings of your Lordſhips upon this occaſion, the Houſe of Commons might have juſtly taken very great exceptions; yet, as an evidence of their moderation, and to ſhew their readineſs to bring the impeached Lords to

ſpeedy

ſpeedy juſtice, the Commons inſiſted only on their propoſition for a Committee of both Houſes, to ſettle and adjuſt the neceſſary preliminaries to the trial; particularly, Whether the impeached Lords ſhould appear, on their trial, at your Lordſhips Bar, as criminals? Whether, being under accuſations of the ſame crimes, they ſhould ſit as judges on each other's trial for thoſe crimes? Or ſhould vote in their own caſes, as, it is notorious, they have been permitted by your Lordſhips to do in many inſtances which might be given? To which particulars your Lordſhips have not yet given a direct anſwer; though put in mind thereof by the Commons.

Your Lordſhips, at a Conference, having offered ſome reaſons why you could not agree to a Committee of both Houſes, to adjuſt the neceſſary preliminaries, the Commons thereupon deſired a Free Conference; and your Lordſhips agreed thereunto: at which, it is well known to many of your Lordſhips, who were then preſent, what moſt ſcandalous reproaches, and falſe expreſſions, highly reflecting upon the honour and juſtice of the Houſe of Commons, were uttered by John Lord Haverſham; whereby the Commons were under the neceſſity of withdrawing from the ſaid Free Conference: for which offence the Commons have, with all due regard to your Lordſhips, prayed your Lordſhips juſtice againſt the Lord Haverſham; but have, as yet, received no manner of ſatisfaction.

The Commons reſtrain themſelves from enumerating your Lordſhips very many irregular and unparliamentary proceedings upon this occaſion; but think it is what they owe to public juſtice, and all the Commons of England, whom they repreſent, to declare ſome few of thoſe reaſons, why they peremptorily refuſe to proceed to the trial of the Lord Somers, on the ſeventeenth of June.

1ſt, Becauſe your Lordſhips have not yet agreed, that a Committee of both Houſes ſhould be appointed, for ſettling the neceſſary,

ſary preliminaries; a method never, until this time, denied by the Houſe of Lords, whenſoever the Commons have thought it neceſſary to deſire the ſame.

2dly, Should the Commons, which they never will do, be contented to give up thoſe rights which have been tranſmitted to them from their anceſtors, and are of abſolute neceſſity to their proceedings on impeachments; yet, whilſt they have any regard to public juſtice, they never can appear as proſecutors before your Lordſhips, till your Lordſhips have firſt given them ſatisfaction, that Lords impeached of the ſame crimes, ſhall not ſit as Judges on each other's trials for thoſe crimes.

3dly, Becauſe the Commons have, as yet, received no reparation for the great indignity offered to them, at the Free Conference, by the Lord Haverſham. The Commons are far from any inclination, and cannot be ſuppoſed to be under any neceſſity, of delaying the trial of the Lord Somers: there is not any article exhibited by them, in maintenance of their impeachment againſt the Lord Somers, for the proof whereof they have not full and undeniable evidence; which they will be ready to produce, as ſoon as your Lordſhips ſhall have done juſtice upon the Lord Haverſham, and the neceſſary preliminaries, in order to the ſaid trial, ſhall be ſettled by a Committee of both Houſes.

The Commons think it unneceſſary to obſerve to your Lordſhips, That moſt of the articles, whereof the Lord Somers ſtands impeached, will appear to your Lordſhips to be undoubtedly true, from matters of record, as well as by the confeſſion of the ſaid Lord Somers, in his anſwer to the ſaid articles: to which the Commons doubt not but your Lordſhips will have a due regard, when his trial ſhall regularly proceed.

Reſolved, That the ſaid reaſons be ſent, by a meſſage, to the Lords.

Ordered, That the Earl of Dyſert do carry the ſaid meſſage.

The

The Earl of Dyſert reported to the Houſe, That he had, according to order, carried up their meſſage to the Lords.

*Veneris, 20° die Julii.*

A MESSAGE from the Lords, by Sir John Franklyn and Sir Lacon William Child:

Mr. Speaker,

We are commanded by the Lords to acquaint this Houſe, That the Lords have appointed Monday, the three-and-twentieth day of this inſtant June, at ten of the clock in the forenoon, for the trial of Edward Earl of Orford, in Weſtminſter Hall.—Alſo,

We are commanded by the Lords to deliver to this Houſe, a copy of the Lord Haverſham's anſwer to the charge exhibited againſt him —Alſo,

We are commanded by the Lords to acquaint this Houſe, That the Lords, in anſwer to the meſſage of the Commons of the ſeventeenth inſtant, ſay; The only true way of determining which of the two Houſes has acted with the greateſt ſincerity, in order to bring the impeached Lords to their trials, is, to look back upon the reſpective proceedings.

The Lords do not well underſtand what the Commons mean by that reſentment, which they ſpeak of in their meſſage. Their Lordſhips own the Houſe of Commons have a right of impeaching; and the Lords have the undoubted power of doing juſtice upon thoſe impeachments, by bringing them to trial, and condemning or acquitting the parties in a reaſonable time: this power is derived to them from their anceſtors; which they will not ſuffer to be wreſted from them by any pretences whatſoever.

Their Lordſhips cannot but wonder, that the Commons ſhould not have propoſed a Committee of both Houſes much ſooner, if they thought it ſo neceſſary for the bringing on the trials; no mention being made of ſuch a Committee, from the firſt of April

to

the ſixth of June; although, during that interval, their delays were frequently complained of by the Houſe of Lords.

The manner in which the Commons demand this Committee, the Lords look upon as a direct invading of their judicature; and therefore, as there never was a Committee of both Houſes yielded to by the Lords, in caſe of any impeachment for high crimes and miſdemeanors, ſo their Lordſhips do inſiſt, that they will make no new precedent upon this occaſion: many impeachments for miſdemeanors have, in all times, been determined without ſuch a Committee; and if now the Commons think fit, by an unprecedented demand, to form an excuſe for not proſecuting their impeachments, it is demonſtrable where the obſtruction lies.

As to the preliminaries, which the Commons mention in particular, as proper to be ſettled at ſuch a Committee; they have received the reſolutions of the Houſe of Lords therein, by their meſſage of the twelfth inſtant, from which, being matters relating intirely to their judicature, their Lordſhips cannot depart.

As to the laſt pretence the Commons would make to ſhelter the delaying the trials, from ſome expreſſions which fell from the Lord Haverſham at the Free Conference, at which offence was taken, their Lordſhips will only obſerve:

1ſt, That they have omitted nothing which might give the Commons all reaſonable ſatisfaction, of their purpoſe to do them juſtice in that matter, ſo far as is conſiſtent with doing juſtice to that Lord; and alſo to preſerve all good correſpondence with them, as appears by the ſeveral ſteps they have taken.

2dly, That this buſineſs has no relation to the trials of the impeached Lords; and therefore their Lordſhips cannot imagine, why the Commons ſhould make ſatisfaction and reparation againſt the Lord Haverſham, a neceſſary condition for the going on with the trials; and, at the ſame time find no difficulty in proceeding on other buſineſs.

And then the meſſengers withdrew.

Reſolved, In anſwer to the meſſage of the Lords appointing Monday next for the trial of the Earl of Orford, That the Lords have been acquainted, That the Commons would proceed, in the firſt place, againſt the Lord Somers: and they are ready to go to that Lord's trial as ſoon as ever the Commons have received ſatisfaction for the affront offered to the Houſe of Commons, by the Lord Haverſham, at the Free Conference; and that the neceſſary preliminaries are adjuſted by a Committee of both Houſes.

Ordered, That the Lord Mordaunt do carry the ſaid anſwer to the Lords.

# APPENDIX, N° 13. (p. 287.)

*What paſſed at Conferences relating to Lord Oxford's Trial.*

*Jovis, 27° die Junii, 1717.*

MR. Carter reported from the Committee appointed to withdraw, and draw up what was proper to be offered to the Lords at the Conference relating to proceedings in the proſecutions of Impeachments, That they had drawn up the ſame accordingly; which they had directed him to report to the Houſe; and he read the ſaid report in his place; and afterwards delivered the ſame in at the Clerk's table: where it was read; and agreed unto by the Houſe; and is as follows; viz.

The Commons, having taken into their conſideration your Lordſhips reſolution, communicated to their Managers, relating to the proceedings on the trial of Robert Earl of Oxford and Earl Mortimer; and being deſirous, as far as in them lies, to maintain a good correſpondence with your Lordſhips; have deſired this Conference; and have commanded us to acquaint your Lordſhips, That they conceive it to be the undoubted right of the Commons to impeach a Peer, either for High Treaſon, or for high crimes and miſdemeanors; or, if they ſee occaſion, to mix both the one and the other in the ſame accuſation.

The impeachment preferred againſt Robert Earl of Oxford and Earl Mortimer is one continued accuſation, conſiſting of high crimes and miſdemeanors, and alſo of charges of High Treaſon: the facts on which the articles preceding thoſe of High Treaſon are grounded, are laid together in order of time, and follow one another ſucceſſively in the manner they were committed.

As

As the Commons thought this the moſt natural method for exhibiting the ſeveral articles againſt the ſaid Earl, they were of opinion, that they ſhould proceed in the proof of theſe ſeveral facts after the ſame method; ſince it is manifeſt, that, in laying open the courſe of ſuch a wicked adminiſtration, the preceding parts of it give light to thoſe which follow; and that the proof of ſeveral of the articles of high crimes and miſdemeanors would naturally lead to the proof of thoſe of High Treaſon.

Your Lordſhips received theſe ſeveral articles of impeachment without making any exception againſt the form in which they were exhibited: the ſaid Earl made his anſwer to them in the ſame order; and has nowhere inſiſted to be tried in any other method; ſo that the Commons are ſurpriſed to find a ſtop put to their proſecution, by an objection which has never been ſtated by the ſaid Earl, and which your Lordſhips had given them ſo little reaſon to expect.

To this muſt be added, That, as the Commons only are maſters of the evidence; and as, upon that account, they are beſt able to determine what to charge firſt, and what next; ſo they are moſt proper to determine in what method to proceed for the advantage of the proſecution; in the event of which, all the Commons of Great Britain are ſo highly concerned: to which they further add, That they ſee no reaſon but that your Lordſhips may as well invert the whole order of the articles, as preſcribe to the Commons thoſe particular articles on which they are firſt to proceed; which will neceſſarily produce ſuch a confuſion, both in the facts and evidence, as is by no means conſiſtent with that clearneſs and perſpicuity in which the Commons think this affair ought to appear.

The Commons, upon examining precedents, do find divers precedents of impeachments for High Treaſon, and other high crimes and miſdemeanors, in the ſame accuſation; and do not

ſind, that the Lords ever objected to ſuch proceeding, or ever gave judgment upon any particular article of an impeachment, before the Commons had gone through and concluded their evidence upon all the articles, or ſo many of them as they thought fit: and the Commons are as much at a loſs to conceive what arguments, or precedents, can be brought to ſupport the reſolution of your Lordſhips to give judgment upon one part of the ſame accuſation, reſerving the other part for a ſubſequent trial; as they are to know what your Lordſhips mean, by admitting the Commons to proceed upon the articles of high crimes and miſdemeanors, after the judgment is given upon the articles for High Treaſon, ſuppoſing the judgment proper for High Treaſon ſhould be given againſt the ſaid Earl.

For theſe reaſons, the Commons aſſert it as their undoubted right to proceed on the trial of Robert Earl of Oxford and Earl Mortimer after the method in which their Managers were proceeding, when interrupted by your Lordſhips reſolution.

Ordered, That the Lord Morpeth do go to the Lords, and deſire the ſaid Conference.

The Lord Morpeth reported, That he having, according to order, been at the Lords, to deſire a Conference, the Lords do agree to a Conference; and appoint the ſame preſently, in the Painted Chamber.

Ordered, That the Committee appointed to draw up what was proper to be offered to the Lords at a Conference, relating to proceedings in the proſecutions of impeachments, do manage the ſaid Conference.

And the Managers went to the Conference.

And being returned;

Mr. Carter reported, That the Managers had been at the Conference, and delivered to the Lords what the Houſe had directed.

*Veneris*,

*Veneris, 28° die Junii.*

A MESSAGE from the Lords, by Mr. Fellows and Mr. Meller:

Mr. Speaker,

The Lords deſire a preſent Conference with this Houſe, in the Painted Chamber, upon the ſubject-matter of the laſt Conference.

And then the meſſengers withdrew.

Reſolved, That the Houſe doth agree to a preſent Conference with the Lords, as their Lordſhips deſire.

And the meſſengers were called in again; and Mr. Speaker acquainted them therewith.

Ordered, That the Committee who managed the laſt Conference, do manage this Conference.

The Managers went to the Conference.

And being returned;

Mr. Carter reported, That the Managers appointed to manage the Conference with the Lords had been at the Conference; and that the ſame was managed, on the part of the Lords, by the Duke of Newcaſtle; who acquainted the Managers, That their Lordſhips, in order to preſerve a good correſpondence with the Houſe of Commons, which they ſhall always endeavour to do as far as lies in their power, have deſired this Conference, upon the ſubject-matter of the laſt Conference; and have directed us to acquaint you, That their Lordſhips judge it a right inherent in every court of juſtice, to order and direct ſuch methods of proceeding as ſuch Court ſhall think fit to be obſerved in all cauſes depending before them, which can have no influence to the prejudice of juſtice, and where ſuch methods of proceedings are not otherwiſe ſettled by any poſitive rule: the power of judicature on all impeachments being a right unqueſtionably inherent in their

Lordſhips;

Lordſhips; and it not being determined by any poſitive rule, whether the Houſe of Commons may proceed to make good the ſeveral articles exhibited for miſdemeanors in ſuch order as they ſhall think fit, before they proceed to make good the articles exhibited for High Treaſon; and there being no precedent where the Commons, upon the trial of any ſuch impeachment, attempted to proceed, in the firſt place, to make good any of the articles contained in ſuch impeachment for high crimes and miſdemeanors; their Lordſhips (conſidering the nature of the impeachment now depending before them, and the method wherein the Managers for the Houſe of Commons were beginning to proceed upon the trial, to make good the firſt article thereof, which is a charge for high crimes and miſdemeanors only; and alſo conſidering the very different methods of proceedings on an impeachment of a Peer for High Treaſon, as well before as upon the trial thereof, and the circumſtances attending ſuch a trial, from the proceedings on an impeachment of a Peer for high crimes and miſdemeanors, and the known circumſtances attending ſuch a trial) thought themſelves obliged to come to the reſolution, communicated to the Commons on the 24th inſtant, as well for the doing juſtice in the caſe depending before them, as for the preventing a new precedent to be made on this trial; in conſequence whereof, a new and unjuſtifiable form of proceeding againſt a Peer, upon an impeachment for High Treaſon, and high crimes, might be introduced, at his trial, upon thoſe articles in which he is charged for high crimes and miſdemeanors only; to the prejudice of the Peerage of Great Britain in all times to come; viz. the trying a Peer on articles for high crimes and miſdemeanors without the Bar: the detaining in cuſtody a Peer ſo accuſed; and repeated commitments of him to the Tower, during the time of ſuch trial; and ſubjecting a Peer to as ignominious circumſtances on his trial on articles for miſdemeanors, as if he were then on his trial on articles for High Treaſon: whereas

a Peer, on his trial on articles for miſdemeanors only, ought not to be deprived of his liberty, nor ſequeſtered from Parliament; and is intitled to the privilege of ſitting within the Bar during the whole time of his trial: in all which particulars, the known rule of proceedings in ſuch caſes may be evaded, ſhould a Peer be brought to his trial on ſeveral articles exhibited againſt him for high crimes and miſdemeanors, and for High Treaſon, mixed together; and the Commons be admitted to proceed, in order to make good the articles for high crimes and miſdemeanors, before judgment be given upon the articles for High Treaſon. Their Lordſhips have fully conſidered the matters offered to them by the Houſe of Commons at the laſt Conference, relating to the proceedings againſt Robert Earl of Oxford and Earl Mortimer; and their Lordſhips are fully ſatisfied, that the reſolution they have taken, aud communicated to the Commons on the 24th inſtant, is juſt and reaſonable; and that the Houſe of Commons are not put under any real inconvenience thereby, in carrying on their preſent proſecution: Their Lordſhips have commanded us to let you know, that they do inſiſt on their ſaid reſolution; viz. "That the Commons be not admitted to proceed, in order to "make good the articles againſt Robert Earl of Oxford and "Earl Mortimer for high crimes and miſdemeanors, till judgment "be firſt given on the articles for High Treaſon."

APPENDIX,

## APPENDIX, N° 14. (p. 308.)

*Report, from a Committee, of certain Heads upon which Perſons might be excepted out of the Bill of Indemnity.*

*Jovis, 23° die Januarii,* 1689.

THE Houſe reſolved into a Committee of the whole Houſe, upon the Bill of Indemnity; and Bill of Pains and Penalties to be inflicted upon ſuch as ſhall be excepted out of the Bill of Indemnity.

Mr. Speaker left the Chair.

Mr. Gray took the Chair of the Committee.

Mr. Speaker reſumed the Chair.

Mr. Gray reports from the Committee of the whole Houſe, That they had agreed upon certain heads in order to their proceedings on the ſaid Bills: which he read in his place; and afterwards delivered the ſame in at the Clerk's table: where they were read; and are as follow; viz.

Reſolved, That it is the opinion of this Committee, That the aſſerting, adviſing, and promoting of the diſpenſing power; and ſuſpending of laws without conſent of Parliament *, as it hath

* Upon this ſubject of the diſpenſing power, ſee what paſſed on the trial of Sir Edward Hales in 1686; the arguments of his Counſel, and the opinion of eleven Judges out of twelve (Mr. Juſtice Strut only diſſenting) "That the King had by law, a power to diſpenſe with the execution of the ſtat. 25 Chs. II. ch. 2d. which requires all perſons holding an office of truſt to receive the ſacrament, and to take the oaths of allegiance and ſupremacy." State Trials, Vol. VII. page 612. Sir Edward Herbert, Chief Juſtice of the Common Pleas, afterwards publiſhed an account of the Authorities in Law, upon which he formed his opinion in that caſe—which account, together with the arguments of Sir Robert Atkins, and Mr. William Atwood, againſt that judgment, are to be found in the ſame volume of the State Trials, page 616—623,—and comprehend all that is to be ſaid on both ſides of this queſtion.

been

been lately exerciſed; and the acting in purſuance of ſuch pretended diſpenſing power, is one of the crimes, for which ſome perſons may juſtly be excepted out of the Bill of Indemnity.

Reſolved, That it is the opinion of this Committee, That the commitment and proſecution of the ſeven Biſhops, be another crime, for which ſome perſons may juſtly be excepted out of the Bill of Indemnity.

Reſolved, That it is the opinion of this Committee, That the adviſing, promoting and executing the commiſſion for erecting the late court for eccleſiaſtical cauſes, be another crime, for which ſome perſons may juſtly be excepted out of the Bill of Indemnity.

Reſolved, That it is the opinion of this Committee, That the adviſing the levying money, and the collecting the ſame for and to the uſe of the Crown, by pretence of prerogative, for other time, and in other manner, than the ſame was granted by Parliament, be another crime, for which ſome perſons may juſtly be excepted out of the Bill of Indemnity.

Reſolved, That it is the opinion of this Committee, That the adviſing the raiſing and keeping up a ſtanding army in the time of peace, without conſent of Parliament, and the quartering of ſoldiers, be another crime, for which ſome perſons may juſtly be excepted out of the Bill of Indemnity.

Reſolved, That it is the opinion of this Committee, That the adviſing, procuring, contriving, and acting in the ſurrendering charters, and in the alteration and ſubverſion of corporations, and in procuring of new charters; and the violating of the rights and freedoms of elections to Parliament, in counties, cities, corporations, boroughs, and ports; and the queſtioning the proceedings of Parliament, out of Parliament, by declarations, informations, or otherwiſe, are other crimes,

for which ſome perſons may be juſtly excepted out of the Bill of Indemnity.

Reſolved, That it is the opinion of this Committee, That undue conſtructions of law, and illegal proſecutions and proceedings in capital caſes, are other crimes, for which ſome perſons may juſtly be excepted out of the Bill of Indemnity.

Reſolved, That it is the opinion of this Committee, That the undue returns of juries, and other illegal proceedings in civil cauſes, are other crimes, for which ſome perſons may juſtly be excepted out of the Bill of Indemnity.

Reſolved, That it is the opinion of this Committee, That the requiring exceſſive bail, impoſing exceſſive fines, giving exceſſive damages, and uſing undue means for levying ſuch fines and damages, and inflicting cruel and unuſual puniſhments, are other crimes, for which ſome perſons may juſtly be excepted out of the Bill of Indemnity.

Reſolved, That it is the opinion of this Committee, That the adviſing King Charles the Second, and King James the Second, by ſome of their Judges and Council, that Parliaments need not be called, according to the ſtatutes, is another crime, for which ſome perſons may juſtly be excepted out of the Bill of Indemnity.

Reſolved, That it is the opinion of this Committee, That the procuring the commiſſion to execute martial law in the Iſland of Sancta Helena, or ſigning inſtructions for putting the ſame in execution, is another crime, for which ſome perſons may juſtly be excepted out of the Bill of Indemnity.

Reſolved, That it is the opinion of this Committee, That the regulating of corporations and boroughs in the reign of the late King James the Second, and the promiſing to take off the penal laws and teſt, are other crimes, for which ſome perſons may juſtly be excepted out of the Bill of Indemnity.

Reſolved,

Reſolved, That it is the opinion of this Committee, That the undertaking, in the reign of the late King James the Second, to repair the ſhips of war, and receiving money for that ſervice, and the not performing the ſame, is another crime, for which ſome perſons may juſtly be excepted out of the Bill of Indemnity.

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